United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960-3559

August 18, 2000

Colonel James G. May
District Engineer
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 323-0019

Dear colonel May:

The purpose of this letter is to provide to you the final interim Standard Local Operating Procedures for Endangered Species (SLOPES) for conducting consultations between the Fish and Wildlife Service and the Army Corps of Engineers (Corps) for permit applications regarding florida panthers (*Puma* (=*Felis*) *concolor coryi*) pursuant to the Endangered Species Act of 1973 (ESA). Enclosure 1 is a copy of these procedures that have been co-developed by our agencies as a consistent means to conduct section 7 consultations under the ESA. Effective immediately, I am directing my staff to use these procedures when consulting with the Corps.

In a letter dated, July 14, 2000, the Service described the Corps' section 7 responsibilities as the action agency which includes preparing a biological evaluation of the proposed action and working with the permit applicant to avoid and minimize effects where possible (Enclosure 2). Specifically, as required under 50 CFR Part 402.14(c), the Corps must provide an account of the factors considered in reaching its effects determination, including:

1. A description of how the anticipated project-related activities would result in adverse effects to panthers, considering the current baseline; the status of the species and its habitat in the action area; the current extent and adequacy of panther and panther habitat protection; cumulative effects of permit issuance; and any known, unrelated, future, non-federal activities reasonably certain to occur within the action area that are likely to affect the species.

2. A description of any measures considered by the applicant or the Corps to avoid or minimize the adverse impacts identified under # 1 above including a discussion of the reason(s) for including or excluding any measures considered from the project design.

Although any project in the consultation are (see Enclosure 1) may affect panthers, an additional determination (likely or not likely to adversely affect) and project-specific information is required before formal consultation can be initiated as outlined in Enclosures 1 and 2. We anticipate that the Corps will review a number of permit applications that have insignificant, discountable, or no effect on panthers or panther habitat within the delineated panther consultation area. For example, permit

applications within the consultation are that are not used by panthers or that do not increase human disturbance or modify panther habitat will generally not require formal consultation. The biological rationale should clearly be explained in the Corps administrative record to support their effect determination. In all cases, however, it is incumbent upon the Corps to conduct an analysis or adopt an applicant-conducted analysis of the effects of the proposed action on listed species as the basis for determining whether initiation of formal consultation is necessary.

The Corps and the Service have co-developed a number of conservation measures that may be appropriate, on a case-by-case basis, to incorporate into project designs to facilitate compliance with the requirements of the ESA. We encourage the Corps and applicants to use measures and conditions deemed appropriate to avoid and minimize adverse effects and in reaching effects determinations for permit applications that may result in adverse effects to and incidental take of panthers. The Service will be available to discuss appropriate measures for specific project with the Corps and the applicant.

We look forward to continuing to wok with you to uphold our mutual responsibilities under the ESA. We are also available to meet with you to discuss Federal agency responsibilities under section 7(a)(1) of the ESA to develop proactive conservation programs for endangered and threatened species. Should you have any questions regarding the issues referenced in this letter, please contact me. For questions regarding specific projects, please contact me at 561/562-3909 extension 234.

Sincerely yours,

James J. Slack
Field Supervisor

Enclosures (2)

cc:
Assistant regional Director-Ecological Services, FWS, Atlanta, eorgia (Ms. Cindy Dohner)
regional Solicitor, DOI, Atlanta, Georgia (Mr. Mike Stevens)
Solicitor, DOI, Washington, DC (Mr. Jeff Bernstein)
Florida State Supervisor, vero Beach, Florida, FWS
Field Supervisor, Jacksonville FO, FWS
Corps, Jacksonville District, Jacksonville, Florida (Mr. John Hall)
Corps, Jacksonville District, Jacksonville, Florida (Mr. James Duck)

U.S. Army Corps of Engineers
Jacksonville District

U.S. Fish and Wildlife Service
South Florida Field Office

Standard Local Operation Procedures (SLOPES) for Section 404 Permits
Florida Panther

As outlined in the final Notice of Issuance and Modification of Nationwide Permits (NWP), dated March 9, 2000 (65 Fed. Reg. 12,818), to provide further assurance that the NWP program complies with section 7 of the Endangered Species Act (ESA), the Jacksonville District of the Corps of Engineers (Corps) has met with local representatives of the U.S. Fish and Wildlife Service (Service) to develop procedures for improving coordination on projects that may affect the Florida panther. The Service and the Corps believe that the standard local operating procedures (SLOPES) are an appropriate way to address section 7 procedures for all classes of activities permitted under Section 404 of the Clean Water Act.

Utilizing best available scientific information, the Service has developed an interim map (attached) which delineates an area within which a proposed project has the potential to affect the Florida panther. Proposed projects requiring a Section 404 permit and occurring in areas designated as "panther consultation area" on the attached map are subject to the requirements of the SLOPE and may require consultation pursuant to section 7 of the ESA.

The Service currently has, in place, a team of experts that is developing new information regarding panther habitat needs and actions necessary for ensuring the survival and recovery of the panther. Information generated by the panther team is expected to assist in instituting new conservation practices and initiatives, enhancing consultation and coordination procedures with state and federal agencies, and in modifying proposed project designs. Upon approval of the team's final product, the interim SLOPE map and procedure will be supplanted by the newer map and additional SLOPES, if appropriate.

The Corps seeks to reduce the possibility of potential effects to the Florida panther by implementing the following interim SLOPES for Section 404 permits:

1. The Corps will use the attached map developed by the Service to identify property that is within possible panther habitat. The Corps and the Service agree that the map constitute the best and most recent information available regarding existence and location of the Florida panther.[1]

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[1]Because panther habitat maps are in the process of revision, the procedures outlined herein should be considered interim SLOPES to be used until the Service develops revised habitat maps during 2001. When revised habitat maps become available, the Corps and the Service will reevaluate the SLOPES outlined herein. In addition to the attached map, a GIS data layer map has been supplied by the Service to provide more exact location data.

The Corps will use the map to make decisions about whether Section 404 permit activity may affect the Florida panther. While no critical habitat has been designated by the Service, Florida panthers may be present in the area on the map identified and "consultation area". Therefore, projects that occur within the area delineated on the map as "consultation area" should be scrutinized to determine if there is a potential for effects to panthers because of the project.

2. When the Corps reviews a proposed project for its potential to effect the Florida panther, it will consider both direct and indirect effects to the panther or panther habitat together with the effects of interrelated or interdependent actions associated with the project:

a Indirect effects - those effects that are caused by the proposed action and are later in time, but still reasonably certain to occur. (50 CFR § 402.02);

b Interrelated actions - those that are part of a larger action and depend on the larger action for their justification. (50 CFR § 402.02);

c Interdependent actions - those that have no independent utility apart from the action under consideration. (50 CFR § 402.02).

3. Based on a review of habitat maps and consideration of potential project effects, including indirect effects, and the effects of interrelated and interdependent actions, the Corps will determine if a proposed project may effect the Florida panther. The Corps' review will result in one of the following four (4) outcomes:

a If the project is located outside the consultation area as indicated on the Florida Panther Consultation Map, the project will be deemed to have no effect on the Florida panther and no further analysis is necessary, unless the Corps has specific, contrary information indicating potential project effects on florida panthers.

b If the project is located inside the consultation area, the Corps will review all the effects of the project on the panther and make its determination. If the Corps determines that the project not affect the Florida panther, no consultation is necessary. The Corps will, however, prepare a memorandum to its files summarizing its analysis and determination.

c If the Corps determines that the proposed project may affect the Florida panther, the Corps will initiate consulatation with the Service. The Corps may, through informal consultation, forgo formal consultation and implement the Section 404 permit activity if the Corps and Service agree, through written concurence, the Secton 404 permit activity is not likely to adversely affect the Florida panther. In addition, the Corps may forgo formal consultation if the applicant agrees to project

modifications that the Corps and Services believe will avoid adverse affects to the Florida panther and the service provides written concurrence for subsequent determinations by the Corps of "is not likely to adversely affect."

d If neither (a), (b), nor (c) applies, the Corps shall engage in formal consultations with the Service.

4. For actions proposed for verification under a NWP, if ESA consultation is conducted, the applicant will be informed in writing the work cannot proceed on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and the activity is authorized, as specified in NWP General Condition 11(a) Endangered Species.

5. The Corps and the Service will work cooperatively to achieve mutually shared objectives of ensuring jeopardy avoidance and panther recovery. The following tiered elevation procedure will be used to remedy any ESA issues which may arise during SLOPE implementation:

a Level I - Corps and Service staff personnel working at the local level to establish or modify SLOPES should discuss any issues with an attempt to resolve them without elevation. If those issues among the level I team members cannot be resolved within 60 days, they will be raised to the level II review team. Level I team members will prepare a written statement summarizing the issues to be resolved and notifying level II members of their intent to initiate elevation.

b Level II - The level II members should consist of the FWS field office supervisor and the Cops district branch chief. Level II members should review the level I summary and elevation request to ensure level I personnel have adequately attempted resolution and elevation is appropriate. Level II will make their best efforts to resolve the issues. If no resolution can be reached at level II within 30 days of having received the notification from the level I team, it shall be elevated to level III personnel. Level II personnel will provide in writing a description of the issues and each agencies' perspective.

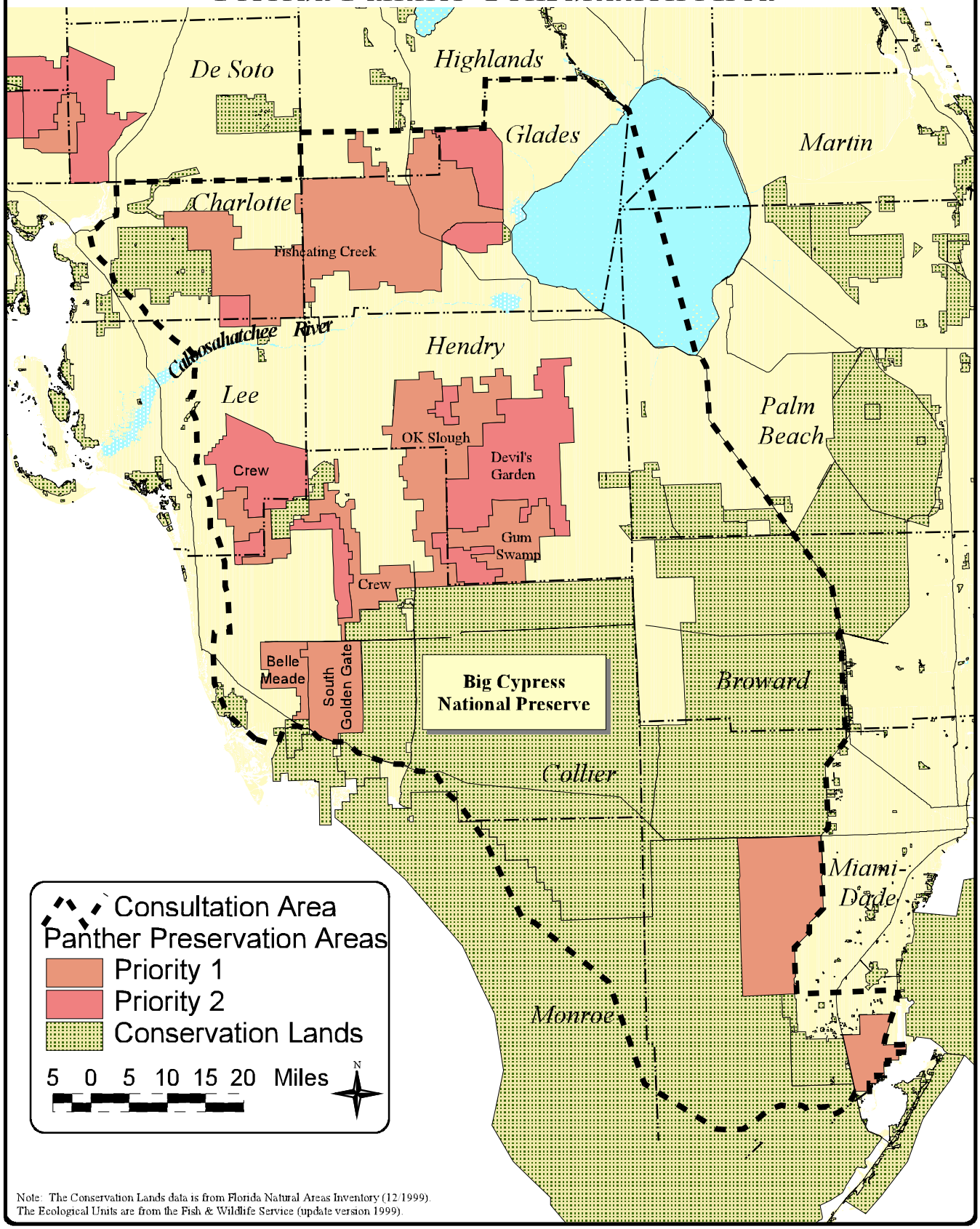
c Level III - The level III personnel should consist of the FWS regional director and the Corps district engineer. They will review the material submitted and resolve the issues within 30 days of receiving the elevation. If they cannot reach a resolution the issues will be elevated to Headquarters. Level III personnel will provide in writing a description of the issues and each agencies' perspective.

d Level IV - Level IV review personnel should be the Director if the Fish and Wildlife Service, and the Director of Civil Works. After a review and full consideration of all comments and each agencies' perspective, the Director of Civil Works will make a final decision within 60 days. The Service may determine

the final decision is not in compliance with section 7 of the ESA.

6. During implementation of the interim SLOPESm the Corps and the Service will evaluate whether there are alternatives for improving the interim SLOPES. If warranted and consistent with the requirements of federal law, following coordination with the Service, the Corps will consider additional interim SLOPES such as the institution of regional permitting conditions, and other necessary actions necessary to meet ESA requirements.

Florida Panther Consultation Area



Note: The Conservation Lands data is from Florida Natural Areas Inventory (12/1999).
The Ecological Units are from the Fish & Wildlife Service (update version 1999).

Endangered Species Act
Interagency Consultation Under Section 7
Army Corps of Engineers and Fish and Wildlife Service

U.S. Army Corps of Engineers' Responsibilities

1. Review proposed action and determine if there are any federally listed, proposed or candidate species in the project area.

2. Make a determination as to whether the direct, indirect, and cumulative impacts of the proposed action have "no effect", "may effect, are likely to adversely affect", or "may affect, are not likely to adversely affect" species.

3. **For a "may affect, not likely to adversely affect"** determination, contact the Service for written concurrence.

4. **For a "may affect, likely to adversely affect" determination**, work with the applicant to modify the proposed action to eliminate adverse effects when possible.

    a. If the "may affect" determination cannot be changed, prepare a biological evaluation/biological assessment in accordance with 50 CFR 402.12.

    b. Contact the Service to initiate formal consultation. Include project description and agency-prepared or applicant-prepared/agency-approved biological evaluation/assessment.

5. Work with the Service and applicant during formal consultation to eliminate or minimize any adverse effects.

6. Review the draft biological opinion and provide comments/concerns to the Service.

7. Review the biological opinion and other options available for compliance with the Act to determine what action will be taken.

8. Notify the Service as to what action was implemented for compliance with the Act.

9. If the biological opinion was accepted, monitor compliance and notify the Service if conditions identified in the opinion have been violated or exceeded.

Endangered Species Act
Interagency Consultation Under Section 7
Army Corps of Engineers and Fish and Wildlife Service

U.S. Fish and Wildlife Service Responsibilities:

1. Provide updated table of listed/proposed/candidate species, their locations, and all current biological information to the Federal action agency.

2. Meet with the action agency, during informal consultation, to discuss project options to eliminate any adverse effects.

3. Review action agency's "not likely to adversely affect" determination for concurrence.

    a. If the Service concurs, provide a written response to the action agency.

    b. If the Service does not concur, provide a written response to the action agency indicating that formal consultation is required.

4. Respond in writing to a request to initiate formal consultation and identify what information is necessary to complete the biological opinion.

5. During formal consultation, work with the action agency for 90 days to understand and discuss the proposed project and its potential effects. Within 45 days of the 90-day period, complete the biological opinion and provide a draft for action agency review.

6. Review comments from the action agency and finalize the biological opinion.

7. Monitor implementation of the biological opinion, if appropriate.

8. Prepare administrative record for the action.