



United States Department of the Interior



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

June 8, 2005

Rebecca Weiss
Planning Division
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Dear Ms. Weiss:

This letter responds to your request to Jane Tutton via telephone for a synopsis of the outstanding issues regarding section 7 consultation under the Endangered Species Act of 1973, as amended (ESA) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). Specifically, you wanted to understand what information the Fish and Wildlife Service (Service) needed to either concur with the U.S. Army Corps of Engineers' (Corps) determinations of effects or request initiation of formal consultation for federally listed species potentially affected by the construction and operation of the Site 1 Impoundment. This letter does not constitute a biological opinion as described under section 7 of the ESA.

You requested that the draft Project Implementation Report/Environmental Assessment (dPIR/EA) serve as the biological evaluation for the effects of the preferred alternative for the Site 1 Impoundment on federally listed threatened and endangered species. The Service was in agreement that the document could serve this purpose provided that the analysis of the effects of the action complied with the requirements outlined in 50 CFR §402.12. Although the proposed Site 1 Impoundment is not considered a major construction project requiring development of an Environmental Impact Statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the information and analysis needs for consultation under the ESA are the same.

By letter, dated October 15, 2004, the Corps provided determinations that the Site 1 Impoundment "may affect, but is not likely to adversely affect" the federally endangered wood stork (*Mycteria americana*), endangered Everglade snail kite (*Rostrhamus sociabilis plumbeus*), endangered Florida panther (*Puma [=Felis] concolor coryi*), endangered West Indian manatee (*Trichechus manatus*), threatened southern bald eagle (*Haliaeetus leucocephalus*), threatened Audubon's crested caracara (*Caracara cheriway*), and threatened eastern indigo snake (*Drymarchon corais couperi*).

On November 9, 2004, the Service provided a draft Fish and Wildlife Coordination Act (FWCA) Report in accordance with the FWCA (16 U.S.C. 661 *et seq.*). This draft FWCA Report contained much of the information necessary for the Corps to perform its analysis on the effects of the Site 1 Impoundment on listed species. This information was not included in the dPIR/EA.



Without an analysis of the effects of the Site 1 Impoundment on listed species, the Service is unable to either concur with the Corps' determinations for listed species or request initiation of formal consultation in accordance with regulation.

We believe that a thorough analysis of the effects of the action on listed species and both operations and ecological monitoring plans are necessary for us to complete our review and provide either concurrence or a request for initiation of formal consultation. We have also requested additional information with respect to the section 404 Clean Water Act (33 U.S.C. §1344) permit application that is pending. The manner in which project-related benefits outweigh the effects of the loss of nearly 1,200 acres of wetlands also needs to be analyzed.

Please contact Jane Tutton at 772-562-3909, extension 235, if you have any questions regarding this letter. The cooperation of your staff and the staff of the local sponsor, the South Florida Water Management District, is greatly appreciated.

Sincerely yours,



James J. Slack
Field Supervisor
South Florida Ecological Services Office

cc:

Service, Jacksonville, Florida (Miles Meyer)
Corps, Jacksonville, Florida (Ray Wimbrough, Mike Rogalski, Steve Sutterfield)
Corps, West Palm Beach, Florida (Tori White)
DEP, Tallahassee, Florida (Greg Knecht)
DEP, West Palm Beach, Florida (Dianne Crigger)
EPA, Jacksonville, Florida (Eric Hughes)
FWC, Vero Beach, Florida (Joe Walsh, Yvette Alger)
FWC, Palm Beach, Florida (Chuck Collins)
SFWMD, West Palm Beach, Florida (Millie Radzikhovsky)