



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

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December 4, 2009

F/SER4:BH/pw

(Sent via Electronic Mail)

Colonel Alfred Pantano
Department of the Army
Jacksonville District Corps of Engineers
Palm Beach Gardens Regulatory Field Office
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, Florida 33410

Dear Colonel Pantano:

Attention: Garrett G. Lips

NOAA's National Marine Fisheries Service (NMFS) reviewed the Jacksonville District's public notice SAJ-2000-2893 (IP-GGL) dated November 20, 2009. To construct a new bridge over the South Fork of the St. Lucie River and to widen to four lanes an existing two-lane roadway, known as SW 36th Street, in Martin County, the Florida Department of Transportation, District 4 (FDOT) requests authorization from the Department of the Army (DA) to permanently fill 0.095 acres of waters of the United States and 0.040 acres of mangrove wetlands, temporarily fill 0.009 acres of mangrove wetlands, dredge 0.350 acres of tidal waters, and erect a temporary 2,525-linear-foot (88,375-square-foot) work trestle over mangrove wetlands and open water. The project would also result in the permanent clearing of 1.017 acres of mangrove wetlands and the temporary clearing of 0.759 acres of mangrove wetlands; permanent shading of 7.20 acres, and temporary shading of 1.40 acres associated with the temporary work trestle; and indirectly impact 15.2 acres of mangrove wetlands within a 250-foot buffer surrounding the bridge due to noise, dust, and vibration. All of the described impacts would be to mangrove or mud/sand bottom that are designated as essential fish habitat (EFH) by the South Atlantic Fishery Management Council.

The public notice does not include a determination by the Jacksonville District regarding the effects of the project on EFH. Instead, the notice acknowledges that the Federal Highway Administration (FHWA), using FDOT as their formally designated representative, has separately initiated EFH consultation with NMFS as part of FHWA's obligation to coordinate with resources agencies under the National Environmental Policy Act (NEPA) and with NMFS under



the Magnuson-Stevens Act. The Jacksonville District intends to adopt the result of the final, complete EFH consultation initiated by FHWA and FDOT as the District's obligation under section 305(b)(2) of the Magnuson-Stevens Act to assess impacts to EFH. This approach for the EFH consultation is acceptable to NMFS and is consistent with the District's adoption of the Environmental Impact Statement (EIS) prepared by FHWA and FDOT.

As detailed below, coordination between NMFS, FHWA, and FDOT for this project has been ongoing for several years and included development of an EIS. The outcome of that coordination is NMFS remains concerned about project's proposed impacts to EFH and their compensatory mitigation; however, our concerns regarding other aspects of the project have been sufficiently addressed. Discussions with FHWA and FDOT are continuing and we anticipate an amicable resolution. Until a final agreement has been reached, however, we recommend the Jacksonville District hold in abeyance its authorization of the project.

EFH Consultation History

Consultation between NMFS and FHWA/FDOT included:

- On November 10, 1999, NMFS provided preliminary comments on the Advanced Notification for a new bridge crossing corridor over the South Fork of the St. Lucie River.
- On May 16, 2003, NMFS provided comments to the Advanced Notification for the Indian Street Bridge PD&E Study including the Draft EIS. NMFS requested additional information and raised concerns about impacts to EFH.
- On December 1, 2003, NMFS again provided comments on the Draft EIS and Wetlands Evaluation Report (WER). This evaluation included a thorough review of the alternatives analysis as well as comments regarding EFH.
- On July 15, 2004, NMFS provided comments on the Final EIS regarding the issue of indirect impacts to wetlands and EFH. Additionally, comments were provided indicating that the amount of wetland impacts may be underestimated. NMFS requested a revised EFH Assessment.
- On September 27, 2005, NMFS provided comments on the revised Final EIS dated August 2005. Impacts to 6.84 acres of EFH were proposed. Compensatory mitigation would be provided via the Regional Mitigation Program (SB 1986) and would involve restoration and enhancement of freshwater and estuarine wetlands in Martin County. FDOT agreed to provide an addendum to the EFH Assessment that would address NMFS' remaining concerns.
- FDOT provided the Final EIS on January 9, 2006, as a response to our previous letters. NMFS did not provide additional comments but indicated, via letter dated February 10, 2006, that we were still awaiting the EFH addendum and final mitigation plan.
- Technical assistance provided resulted in the receipt of an early draft EFH Addendum/Assessment on September 25, 2009. Informal feedback was provided on September 29, 2009. FHWA and FDOT are revising the EFH Addendum/Assessment based on this feedback. NMFS is currently awaiting the revised document and looks forward to working with FDOT and FHWA to complete consultation.

Impacts to EFH

The project described in the public notice does not differ significantly from the project described in the Final EIS. Correspondences listed above describe EFH within the project area, the

significance of the habitats, and the impacts expected to result from the project. Those descriptions are incorporated here by reference. In short, the project would result in permanent impacts to 8.257 acres of mangrove wetlands, permanent impacts to 0.445 acres of sand/mud bottom, temporary impacts to 2.168 acres of mangrove wetlands, and 15.20 acres of indirect impacts to mangrove wetlands. FDOT proposes to mitigate for the impacts by creating an onsite 0.38-acre mangrove wetland, enhancing 15 acres of mangrove and bottomland hardwood swamp at the Delaplaine Peninsula Blueway Preserve, mitigate waters of the US at a 6:1 ratio at the Dupuis Reserve Mitigation Bank, and to debit Uniform Mitigation Assessment Method (UMAM) credits from Martin County's Hutchinson Island Florida Oceanographic mitigation site. NMFS is concerned about the appropriateness of the mitigation. Offsetting mangrove wetland impacts with bottomland hardwood swamp would not mitigate the lost fishery functions provided by the mangroves. Additionally, there have been no details provided to NMFS about any of the mitigation plans. Specifically, UMAM scores for the mitigation areas have not been provided; construction level details for the 0.38-acre mangrove creation site are missing (i.e. grading and planting plans); and details about success criteria, monitoring and maintenance, and long-term stewardship and management have not been provided.

EFH Conservation Recommendation

As indicated in the public notice, FDOT is the designated non-federal representative acting on behalf of the FHWA pursuant to 50 CFR 600.920(c). Coordination between NMFS, FHWA, and FDOT is ongoing. We are satisfied from this coordination that FDOT and FHWA understand that the EFH consultation must be completed prior to moving forward with this project and that FDOT and FHWA intend to use the addendum to the EFH Assessment as the means for describing the revised mitigation plan. We find acceptable the District's plan to use the final, complete EFH Addendum/Assessment prepared by FHWA and FDOT as the vehicle for meeting the District's obligation under section 305(b)(2) of the Magnuson-Stevens Act to assess impacts to EFH. Until that plan is completed, we conclude that the proposed project would adversely impact EFH based on the information provided thus far. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely impact EFH. Based on this requirement, NMFS provides the following:

EFH Conservation Recommendation

- The Department of the Army shall hold in abeyance authorization of the project until FDOT and FHWA complete their EFH consultation with NMFS.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and NMFS' implementing regulation at 50 CFR Section 600.920(k) require your office to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, in accordance with our "findings" with your Regulatory Branch, an interim response should be provided to NMFS. A detailed response then must be provided prior to final approval of the action. Your detailed response must include a description of measures proposed by your agency to avoid, mitigate, or offset the adverse impacts of the activity. If your response is inconsistent with our EFH Conservation Recommendations, you must provide a substantive discussion justifying the reasons for not following the recommendations.

Endangered Species Act Consultation History

Acting on behalf of the FHWA, FDOT is the designated non-Federal representative (50 CFR 402.08) for this action under the Endangered Species Act (ESA). On May 14, 2009, FDOT determined that the proposed activity may affect, but is not likely to adversely affect, the smalltooth sawfish (*Pristis pectinata*). FDOT requested informal consultation with NMFS for this species, pursuant to ESA section 7. By letter dated October 6, 2009, NMFS concurred with FDOT's determination.

We appreciate the opportunity to provide these comments, and plan to work closely with you throughout the permitting process for this project. Please direct subsequent correspondence on this project to Mr. Brandon Howard. He may be reached by telephone at (561) 616-8880 extension 210, by email at Brandon.Howard@noaa.gov or at US Environmental Protection Agency, 400 N Congress Avenue, Suite 120, West Palm Beach, Florida 33401.

Sincerely,



/ for

Miles M. Croom
Assistant Regional Administrator
Habitat Conservation Division

cc:

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