

Regulatory Division

JUL 28 2003

Ms. Linda Ferrell
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960

Dear Ms. Ferrell:

Thank you for participating in the conference call on June 23, 2003, to discuss Section 7 consultation for the endangered Florida panther (panther). In light of that conference call, we realize that our agency's threshold for the type of activities that may affect this species needs to be more sensitive than past customary practice.

The call made us aware of the differences between our reasoning and the U.S. Fish and Wildlife Services ("Service") reasoning in light of what appears to be newly-developed Service information. It came as a surprise to discover that the Service is using 1-2 mile proximity to a telemetry point as a component of their evaluation of the nationwide permit verifications. We were also unaware that the Service considered the panther to be sensitive to changes in land cover resulting from single-family residential construction within northern Golden Estates and other subdivided rural areas because of the possibility that panthers may travel through these areas. I am hoping that better communication in the future will help alleviate such surprises. Any suggestions you may have would be welcomed.

We now understand that the Service is in the process of developing a regulatory tool and a conservation strategy for the panther that utilizes new information from the Multi-species/Ecosystem Recovery Implementation Team (MERIT) team. This may be useful to the Corps in its evaluations, however, it is our understanding that these will not be available for use until sometime in the future. In the interim, we are taking immediate steps to incorporate the new information we received during the conference call into an interim tool (Panther Key) which the Corps' Project Managers can utilize to assist them in their effect determinations as prescribed under Section 7(a)(2) of the Endangered Species Act and its implementing regulations at 50 CFR Section 402. Accompanying the key will be the telemetry map showing the telemetry points and the consultation area from the Service's interim Standard Local Operating Procedures for Endangered Species (SLOPES) for the panther. I have attached the key, the accompanying map, and our rationale in designing the key for your information. We intend to use this key and map until the Service provides us with whatever it is developing in a usable form.

In order to alert the public to this change, we are issuing a public notice informing them of our intent to use the interim Panther Key in the evaluation of all projects within the polygon (consultation area) provided by the Service for the interim SLOPES. To ensure that all nationwide permits 12, 14, 39, and 40 are properly evaluated prior to verification within the consultation area, we propose to eliminate the 1/10 acre preconstruction notification threshold for them. The public notice will announce our proposal and will also solicit comments on it.

This will undoubtedly increase the workload of both of our agencies. We are currently gathering the data to estimate the magnitude of that increase, and I will send you that estimate when we finalize it. We hope that this doesn't create the backlog similar to that which occurred with the manatee. Additionally, my Ft. Myers staff has recently estimated that only a fraction of all construction in northern Golden Gate Estates will fall under Corps' jurisdiction. If, indeed, this is an area of great concern to the Service because of its importance to the panther, it may greatly increase the Services' Habitat Conservation Plan workload.

We intend to proceed in this manner unless we hear otherwise from you within 7 calendar days of the date of this letter. If you have any questions, please do not hesitate to contact me at 904-232-1177

Sincerely,

John R. Hall, Ph.D.
Chief, Regulatory Division

Enclosures

cc: 11 July
Santos/CESAJ-RD-P
MB Burns/CESAJ-RD-P
GJM Moore/CESAJ-OC
Hall/CESAJ-RD