



United States Department of the Interior



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

March 13, 2019

Jason Watts
Director, Office of Environmental Management
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399

Subject: FDOT Lead Agency Role for Endangered Species Act Consultation

Dear Mr. Watts:

Thank you for your February 13, 2019, letter regarding the Florida Department of Transportation (FDOT) role as lead agency for Endangered Species Act (ESA) consultation.

FDOT is unique due to its authority established in federal legislation for responsibilities under the National Environmental Policy Act (NEPA) for highway projects¹. The Federal Highway Administration assigned, and FDOT assumed, all responsibilities under federal environmental laws, including those under the Endangered Species Act. FDOT is the lead agency for ESA consultation on federal projects; FDOT coordinates with federal agencies on state-funded projects that require ESA consultation during permitting.

1. For federal-funded projects, as the “lead agency,” FDOT analyzes and consults with the U.S. Fish and Wildlife Service (Service) as part of its Project Development and Environment (PD&E) Study phase. For minor projects without a PD&E phase, FDOT will initiate consultation during the permit application process.
2. For state-funded projects requiring ESA consultation for federal permits, FDOT will obtain technical assistance from the Service during the PD&E phase, and subsequently coordinate with the U.S. Army Corps of Engineers and/or the U.S. Coast Guard to determine lead agency status for ESA consultation.

Thank you for the clarification of the process and expectations for ESA consultation as FDOT manages these distinct categories of federal and state-funded transportation projects in Florida. If you have any questions, please contact me at 772-469-4285.

Sincerely,

Larry Williams
State Supervisor

cc:

Service, Jacksonville (Jay Herrington)
Service, Panama City (Catherine Phillips)
Service, Vero Beach (Roxanna Hinzman)
USACE, Panama City (Andrew Kizlauskas)
USCG, Miami (Randall Overton)

ⁱ The 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 6005(a) of the SAFETEA-LU established a Surface Transportation Project Delivery Program that allowed the Secretary of the United States Department of Transportation to assign to certain states the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law with respect to one or more highway projects within the State. As modified by MAP-21, this assignment of responsibility became applicable to all states.

In 2016, the Florida Department of Transportation assumed the Federal Highway Administration's (FHWA's) responsibilities under the National Environmental Policy Act (NEPA) for highway projects on the State Highway System and Local Agency Program projects off the SHS, pursuant to 23 U.S.C. 327. In general, FDOT's assumption includes all highway and roadway projects in Florida whose source of federal funding comes from FHWA or which constitute a federal action through FHWA. This includes responsibilities for environmental review, interagency consultation and other regulatory compliance-related actions pertaining to the review or approval of NEPA projects. Therefore, whereas FHWA was previously identified as the Lead Federal Agency, this function is now served by FDOT with approval authority resting in the Office of Environmental Management (OEM). The scope of this assignment includes all of the USDOT Secretary's responsibilities for all NEPA document types (CE, EA and EIS) and all environmental regulations/laws (Section 4(f), Section 106 of the National Historic Preservation Act, Endangered Species Act, Clean Water Act, etc.) for highway projects. The NEPA *assignment* actually delegates the responsibilities, with an FHWA oversight role, as opposed to making FDOT a designated representative for consultation purposes. While "designated representatives" cannot initiate formal consultation, agencies like FDOT with delegated authority can. In summary, pursuant to 23 U.S.C. §327(a)(2)(8), FHWA assigned and FDOT assumed all of the USDOT Secretary's responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of highway projects required under the federal environmental laws.



Thu 3/7/2019 11:08 AM

Kizlauskas, Andrew A CIV USARMY CESAJ (US) <Andrew.A.Kizlauskas@usace.army.mil>

RE: Lead Agency for ESA Consultation (UNCLASSIFIED)

To: Clark, Thu-Huong; Overton, Randall D CIV; Mark Cantrell

Cc: Watts, Jason; Cornwell, Kaitasha; Randy Turner; Payne, Lylal C CIV USARMY CESAJ (USA)

EXTERNAL SENDER: Use caution with links and attachments.

CLASSIFICATION: UNCLASSIFIED

Good morning,

The Corps has appreciated the opportunity to discuss this important process to clarify and more efficiently address ESA requirements. The Corps concurs with the process outlined in the February 13, 2019 "FDOT Lead Agency Role for Endangered Species Act Consultation" letter.

V/R,

I

Andrew A. Kizlauskas
U.S. Army Corps of Engineers
Chief, Panama City Beach Permits Section
415 Richard Jackson Blvd., Ste. 411
Panama City Beach, FL 32407
(850) 763-0717



Wed 2/13/2019 11:42 AM

Overton, Randall D CIV <Randall.D.Overton@uscg.mil>

RE: Lead Agency for ESA Consultation

To: Clark, Thu-Huong; Andy Kizlauskas (andrew.a.kizlauskas@usace.army.mil); Mark Cantrell

Cc: Watts, Jason; Cornwell, Kaitasha; Randy Turner; D07-06-DISTRICTSTAFF-DPB

Follow up: Start by Wednesday, February 13, 2019. Due by Wednesday, February 13, 2019.
You replied to this message on 2/13/2019 11:49 AM.



Lead Agency roles for ESA consultation.pdf
108 KB

EXTERNAL SENDER: Use caution with links and attachments.

The Coast Guard concurs with the Lead Agency roles for ESA consultation as outlined in the attached document. Thank you for the discussion and the opportunity to review the document.

Sincerely,

Randall Overton, M.P.A.
Chief, Permits Division
Coast Guard Seventh District Bridge Administration
909 SE 1st Ave Suite 432
Miami, FL 33131
(305) 205-0795 Cell
(305) 415-6736 Office



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

KEVIN THIBAUT, P.E.
SECRETARY

February 13, 2019

VIA ELECTRONIC MAIL

Mark Cantrell
U.S. Fish and Wildlife Service
Statewide Transportation Coordinator
1601 Balboa Avenue
Panama City, FL 32405

Andrew Kizlauskas
U.S. Army Corps of Engineers
Chief, Panama City Permits Section
415 Richard Jackson Blvd., Ste. 411
Panama City Beach, FL 32407

Randall Overton
U.S. Coast Guard
Commander, Seventh Coast Guard District
909 SE 1st Avenue
Suite 432
Miami, FL 33131

RE: FDOT Lead Agency Role for Endangered Species Act Consultation

Dear Gentlemen,

On December 14, 2016, the Florida Department of Transportation (FDOT) entered into an agreement with the Federal Highway Administration (FHWA) to assume its responsibilities under the National Environmental Policy Act (NEPA) for highway projects (NEPA Assignment). Under NEPA Assignment, FDOT performs NEPA analysis, review and approvals, including responsibilities under the Endangered Species Act of 1973, as amended. FDOT follows the FHWA guidance memo from February 2002 regarding the implementation of the Endangered Species Act (ESA) for highway projects. FDOT would like to take this opportunity to document its role as the "lead agency" for ESA consultation on federal projects as well as how it intends to coordinate with federal agencies on state funded projects that require ESA consultation during permitting.

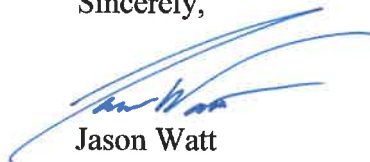
For federal projects, FDOT as the “lead agency” will initiate consultation with the U.S. Fish and Wildlife Service (USFWS) as part of the Project Development and Environment (PD&E) Study. FDOT will provide analysis appropriate for the USFWS to give concurrence on species and critical habitat effect determinations (excluding “no effect” determinations as documented in previous correspondence with USFWS 12/14/18). Supporting information for “no effect” determinations and results of any applicable programmatic or individual consultation during PD&E are documented in the NEPA Environmental Document. If there is a need to re-initiate consultation during the Design Phase, FDOT maintaining the role of “lead agency” will re-initiate consultation with the USFWS. The consultation information will be provided to the US Army Corps of Engineers (USACE) and/or the U.S. Coast Guard (USCG) as part of the permit application(s) to be incorporated in the regulatory agency action.

For minor projects that do not have a PD&E phase (typically approved as a Type 1 Categorical Exclusion (CE) and sometimes as Type 2 CEs), FDOT as the “lead agency” will initiate ESA consultation with the USFWS and provide the consultation information to the USACE and/or USCG as part of the permit application(s) to be incorporated into the regulatory agency action.

For state funded projects requiring ESA consultation as a result of federal permitting, FDOT will obtain technical assistance from the USFWS as part of the PD&E Study. Results of the technical assistance will be included in the permit application(s). At the time of permitting for these projects, the USACE and/or USCG will coordinate with FDOT to determine which permitting agency should be the “lead agency” to initiate ESA consultation.

We respectfully request a reply confirming your agency’s concurrence with this process. Thank you for your partnership in streamlining transportation projects. If you have any questions, please contact me at 850-414-4316 or by email at Jason.Watts@dot.state.fl.us.

Sincerely,



Jason Watt
Director, Office of Environmental Management

JW/thc