

# APPENDIX B

## **Section 7(a)(2) Process**

**Note that the Section 7(a)(2) form may be modified as mutually agreed by FDOT and USFWS for improving clarity and utility.**

**FLORIDA DEPARTMENT OF TRANSPORTATION  
CONSERVATION PLAN FOR THE FLORIDA PANTHER  
PROJECT-LEVEL SECTION 7 FORM**

**Purpose:** The purpose of this form is to ensure that the Florida Department of Transportation (FDOT) complies with Section 7(a)(2) and 9 of the Endangered Species Act (ESA) and the procedures for informal and formal consultation described in Code of Federal Regulations 402.13 and 402.14 for the action(s) associated with the FDOT Conservation Plan for the Florida Panther (Plan) described below in Section B. Specifically, this project-level section 7(a)(2) form is only for the endangered Florida panther which is covered by the Plan described in the Action section. And this form documents, quantifies, exempts, and tracks take of Florida Panther that is reasonably certain to occur. A separate consultation is required for any other listed species and/or critical habitats in the action area.

**Action:** Implementation of FDOT activities or projects in accordance with the Plan, developed under Section 7(a)(1) of the Endangered Species Act (ESA) of 1973. Activities and projects are defined in the section **Authorized Projects/Activity Types/Descriptions** of the Plan and may occur either within the Florida panther focus area or outside the focus area with potential for effects (either beneficial or adverse).

Projects that qualify for ESA consultation under the FDOT Programmatic Approach for Minor Transportation Activities (PA) (refer to Section V, Group 1) will be documented through use of the Statewide Environmental Project Tracker (SWEPT) PA tool and not on this form.

**Date:**

FDOT Project Title:

FDOT Financial Project ID:

FDOT District:

County:

Service Consultation Code:

Date Received:

Consultation Initiation Date:

## INSTRUCTIONS

1. Sections A through D are to be drafted by FDOT and submitted to FWS for review and consideration in finalizing the form.
2. Select Type of Project
3. Describe the FDOT project or activity.
4. Provide Effects Analysis and select the appropriate Determination of Effects.
5. Attach Project Level Section 7 Form to Natural Resources Evaluation (which acts as a Biological Assessment per FDOT Project Development and Environmental Manual, Part 2, Chapter 16) when consultation is also required for other listed species or critical habitat.
6. FWS to complete Sections E through G
7. Complete Effects of the Action and **Incidental Take** sections when appropriate.
8. Obtain
9. **Approval** and signature(s) as appropriate.
10. ES office should enter the project into the appropriate FWS database (e.g., ECOSphere) as a project under the Plan. One "master" ECOSphere project for the Panther plan with subsequent projects linked to that record.
11. Attach the Project Level Section 7 Form to the Biological Opinion when consultation is also required for other listed species or critical habitat.
12. Ensure the official file or administrative record contains all necessary information.

**A. Type of Project (Refer to Section III of the Plan) – choose all that apply:**

Safety Improvements

Resurfacing, Restoration, Rehabilitation (RRR)

Add Lanes and Reconstruction

New Construction

Bridge Rehabilitation, Replacement, or Widening

Toll Facilities

Shared Use Path

Rest Areas, Welcome Centers, Services Plazas, Weigh Stations Landscaping

Intelligent Transportation Systems (ITS)

Wildlife Crossings

Maintenance

Emergency Repairs

**B. Project Description**

Describe the project including, limits, scope, anticipated letting date, etc. Attach any graphics or plan sheets that may support this discussion.

**C. Effects Analysis (Refer to *Effects Analysis of the FDOT Transportation Program* of the Plan)– choose appropriate project Group and provide required details in that section to support the effect determination. Group 1 projects (qualifying for the minor transportation activities PA) are completed in SWEPT tool.**

**Group 2** - Projects with activities in Category A or B of the PA that require minor amounts of right of way and which the PA conservation measure (noted below) is still appropriate.

If land cover types for minor right of way needs are either Urban or Water, provide a brief description of the additional right of way locations (or provide a figure). If the right of way to be acquired for the project includes additional land cover types, go to Group 3.

Does the project include new right of way fencing? If yes, fence ends should be positioned so that animals are not funneled onto the roadway. Ideally, fence ends should occur at bridges or culverts to encourage safe passage beneath the roadway. Discuss applicability of this conservation measure to the project.

The resulting effect determination from the PA is (select one: NE/MANLAA) and is still appropriate given the information above.

**Group 3** - Projects with activities in Category A or B of the PA that do not fit in Group 2, and Projects with activities in Category C of the PA that require right of way or reach a MA determination when using the PA.

- 1) For these projects, FDOT will first apply the USACE Florida Panther Effect Determination Key (February 19, 2007).
  - a) For projects that reach a “no effect” determination through the key, no further consultation will be required.
  - b) For projects that reach a “may affect” determination FDOT will consider habitat impacts and documented panther occurrences as follows:
    - i. FDOT will purchase the appropriate PHUs based on the USFWS Panther Habitat Assessment Methodology (September 2012), except for retrofit projects in which case FDOT may use the PHU credit for Wildlife Crossings methodology in **Appendix G** to address any PHUs that may be required.
    - ii. Where there is a documented panther occurrence within a two-mile radius of the project limits within the last two years FDOT will consider implementing the following conservation measures as applicable and appropriate for the project conditions.
      - (1) ROW fencing (to reduce potential for WVCs)
      - (2) Riprap Modifications under bridges to support incorporation of wildlife shelves.
      - (3) Culvert upgrades or new culverts intended to reduce WVCs.
      - (4) Application of other conservation measures outlined in the Plan.

Discuss the application of the USACE Florida Panther Effect Determination Key (February 19, 2007), and for projects that do not reach a “no effect” determination, discuss proposed conservation measures and provide the effect determination (either “may affect, not likely to adversely affect” or “likely to adversely affect” as appropriate).

- Group 4 - Projects not covered by the PA outside the Panther focus area. No habitat impact offsets through purchase of PHUs is required, but there may be an opportunity for FDOT to provide conservation measures that reduce WVCs (current or future anticipated) or that support range expansion. FDOT will consider documented panther vehicle hot spots (e.g., most recent version of the Southwest Florida Roads Hot Spots GIS data layer) within the project limits and will consider implementing conservation measures outlined in the Plan as applicable and appropriate for the project conditions.

Describe documented panther occurrences. Discuss whether there are any documented WVCs. Describe any efforts to offset documented WVC, potential future WVCs, panther range expansion opportunities, or other beneficial effects from implementation of the project. Discuss proposed conservation measures and provide the effect determination.

- Group 5 - Projects not covered by the PA inside the panther focus area. Both habitat and the potential for direct impacts to panthers will be addressed through conservation measures for these projects using conservation measures outlined in the Plan as appropriate and applicable to the project conditions.

#### Habitat

Describe the potential for the project to fragment existing panther habitat. Describe the habitat impact avoidance and minimization measures (road widening vs new alignment). Avoidance of higher quality panther habitat with pond sites, etc. Describe the amount/quality of impacted panther habitat within the project footprint using USFWS Panther Habitat Assessment Methodology (September 2012). Provide table. Discuss where PHUs will be purchased from or that will be offset through application of the methodology in **Appendix G**.

#### Direct Impacts

Describe in detail the amount of existing Panther Vehicle Collisions (PVCs) within the project limits or road segment including identified panther hotspots using most recent version of the Southwest Florida Roads Hot Spots GIS data layer. Specifically identify any hotspots with greater than 2 PVCs within the project footprint. Include relevant PVC information including dates of collisions (within last 5-10 years or older), clusters, age, sex, time of day/year.

Describe the presence/absence of existing conservation lands adjacent to the project footprint.

Describe the existing land use/habitat adjacent to the project footprint as it relates to panther and panther prey usage (hunting, breeding, denning). Include any future land use changes/planned conservation easements/acquisitions (Florida Forever, etc.).

Describe any past actions or future planned actions in the vicinity of the project footprint which may reduce or limit panther vehicle collisions, provide range expansion opportunities, or other beneficial effects from implementation of the project. Discuss proposed conservation measures and provide the effect determination.

#### **D. Determination of Effects**

Choose one of the following:

- Project results in a No Effect or May Affect, Not Likely to Adversely Affect determination with appropriate conservation measures.
- Project results in a May Affect, requiring further consultation, or a May Affect, Likely to Adversely Affect determination.

#### **TO BE FILLED OUT BY USFWS**

#### **E. Describe the Effects of the Action**

Describe the Effects of the Action on the panther.

#### **Effects Summary**

- The effects of the project **are not** reasonably certain to result in any adverse effects to the Florida Panther. Therefore, this project is not likely to jeopardize the Florida Panther **[Proceed to section I of this form.]**
- The effects of the project **are** reasonably certain to result in adverse effects to the Florida Panther that may (or may not) rise to the level of incidental take. However, the project's activities and effects fall within those considered by the Plan, (see Plan for detailed explanation). **[If incidental take is reasonably certain, proceed to section F of this form. If not, proceed to section I of this form.]**

#### **F. Incidental Take**

For projects with a May Affect determination and which injury or death to panther is reasonably certain to occur as a result of the action or associated habitat loss, estimate the extent or amount of anticipated take in the table below: **[Then proceed to section I of this form.]**

Estimate the extent or amount of anticipated take.

<b>Anticipated Take</b>	<b>ITS Amount or Extent</b>
<i>Panther Habitat</i>	<i># PHUs</i>
<i>Vehicle Collision Range</i>	<i>Between X and Y</i>

## **G. Incidental Take Monitoring and Reporting**

Incidental take should be monitored and reported using the same units of measure (e.g., impacted PHUs). During and post project construction, FDOT will report if the amount of impacted panther habitat exceeded the amount permitted. Additionally, FDOT annually produces the panther hotspot data which tracks panther vehicle collisions. FDOT will monitor the rate of PVCs on state roadways to identify any post project hotspots. If any new hotspots are identified, FDOT will coordinate with the Service to determine if any additional protective or conservations measures are reasonable and prudent.

## **H. Approval**

Based on the information provided in this form, it has been determined that [choose one]:

- 1. The Project meets the coverage criteria described in the Plan therefore is not likely to jeopardize the continued existence of a species. Any incidental take that is reasonably certain to occur is exempted from section 9 prohibitions provided the project complies with the associated consultation.
- 2. The Project does not meet the coverage criteria described in the Plan or the Project Leader defers the project for review by the Regional Office for the following reason(s):

### **Reviewing ES Biologist**

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Name/Title	Signature	Date
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### **Supervisor (for projects with no take), Division of Environmental Review Approval**

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Name/Title	Signature	Date
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### **Manager (for projects where take is reasonably certain to occur), Division of Environmental Review Approval**

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Name/Title	Signature	Date
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