



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ERIK R. FENNIMAN
INTERIM SECRETARY

December 12, 2018

VIA ELECTRONIC MAIL

Mr. Larry Williams
State Supervisor
US Department of the Interior
Fish and Wildlife Service
1339 20th Street
Vero Beach, Florida 32960-3559

RE: No Effect Determinations and Species Consultation Keys

Dear Mr. Williams:

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, the FDOT performs NEPA analysis, reviews and approvals, including responsibilities under the Endangered Species Act of 1973, as amended. The FDOT follows the FHWA guidance memo from February 2002 regarding the implementation of the Endangered Species Act for highway projects.

The FDOT would like to take this opportunity to confirm that as an "action agency" through NEPA Assignment, it is appropriate for the FDOT to make "no effect" determinations (as defined in the USFWS Endangered Species Consultation Handbook, March 1998) and that concurrence from USFWS is not required for "no effect" determinations.

The FDOT would also like to memorialize the acceptability of its use of various programmatic effect determination keys between the US Fish and Wildlife Service (USFWS) and the US Army Corps of Engineers (USACE) during highway project development (i.e., Project Development and Environment or Design phases). Current keys that the FDOT typically uses are in the attached table. The FDOT requests that as future keys appropriate for highway projects or new versions of existing keys are implemented the USFWS agrees to amend the table (via letter or e-mail) accordingly.

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The FDOT understands that the keys can only be used to the extent that the scope of the FDOT project is consistent with the range of effects consider by each key. The FDOT recognizes that USFWS field offices may use different keys for a given listed species due to the species regional requirements and the FDOT will adhere to the appropriate key for the project location. When usage of a key results in a "no effect" or "not likely to adversely affect" determination, the FDOT will comply with the documentation requirements and any applicable avoidance and minimization measurements outlined in each key.

The FDOT will include the results of the use of the keys in the NEPA Environmental Document. During project development for higher level NEPA Classes of Action (i.e. Type 2 Categorical Exclusions, Environmental Assessments and Environmental Impact Statements), FDOT will continue to provide USFWS with technical reports (typically a Natural Resources Evaluation) which will also document use of the keys. In addition, FDOT will continue to provide other federal agencies (i.e., the USACE and US Coast Guard) these technical reports or permit applications that document use of the keys during project development.

If the use of the key results in a requirement to request consultation, the FDOT will consult accordingly.

The FDOT appreciates our continued partnership with USFWS and looks forward to your response. If you have any questions, contact me directly at (850)414-4316 or Jason.Watts@dot.state.fl.us.

Sincerely,



Jason Watts
Director, Office of Environmental Management

JW/kc

Attachment



United States Department of the Interior



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

December 14, 2018

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

Subject: Clarification of no effect determinations and species keys for endangered species

Dear Mr. Watts:

Thank you for your December 12, 2018, letter regarding the Florida Department of Transportation (FDOT) responsibilities for the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) consultation.

FDOT has a formal agreement with the Federal Highway Administration (FHWA) for its responsibilities under NEPA for highway projects. Under this NEPA Assignment, FDOT performs NEPA analysis, reviews and approvals; including those under the ESA. FDOT follows FHWA guidance for implementation of the ESA for highway projects.

Because FDOT is the “action agency” based on the NEPA Assignment, it is appropriate for FDOT to make “no effect” determinations and concurrence from the U.S. Fish and Wildlife Service (USFWS) is not required for “no effect” determinations. We agree it is appropriate for FDOT to use the various programmatic effect determination keys to evaluate its proposed actions, and to include the results in the NEPA Environmental Document. Some of these keys have been developed between USFWS and the U.S. Army Corps of Engineers. We will work with you to maintain a list of the latest tools for regulatory streamlining during transportation project review, and to regularly review their effectiveness.

Thank you for your partnership in conserving fish and wildlife resources. If you have any questions, please contact me at 772-469-4285 or by email at larry_williams@fws.gov.

Sincerely yours,

Larry Williams
State Supervisor, Ecological Services

cc:

USFWS, Jacksonville, Florida (Jay Herrington)
USFWS, Panama City, Florida (Catherine Phillips)
USFWS, Vero Beach, Florida (Roxanna Hinzman)

Species Effect Determination Keys commonly used by FDOT

Name of Key	Publication Date
Eastern Indigo Snake Programmatic Effect Determination Key (South Florida)	8/1/2017
Eastern Indigo Snake Programmatic Effect Determination Key (North Florida)	8/12/2013
Florida Panther Effect Determination Key	2/19/2007
Florida Manatee Key Programmatic Biological Opinion	Apr-13
Florida Manatee Key Programmatic Biological Opinion - Addendum	5/13/2019
Programmatic Piping Plover Biological Opinion	5/22/2013
Wood Stork Key for Central and North Peninsular Florida	Sep-08
Associated approval to use the Wood Stork Key for Central and North Peninsular Florida for Panhandle Counties	5/1/2013
South Florida Programmatic Concurrence and Key (Wood stork)	5/18/2010

Added August 2019

Archived: Wednesday, August 14, 2019 9:09:16 AM
From: Cornwell, Katasha
To: Williams, Larry
Cc: Gonzalez, Rafael; Mark Cantrell; Watts, Jason
Subject: RE: [EXTERNAL] Species Consultation Keys - Request to Update List
Sensitivity: Normal

Larry,

Good morning. Yes, this e-mail is sufficient for FDOT's needs. Thank you for the quick response. We'll be ready to reach out again as the additional keys are ready for use.

Have a good day.

Respectfully,

Katasha

From: Williams, Larry [mailto:larry_williams@fws.gov]
Sent: Tuesday, August 13, 2019 2:02 PM
To: Cornwell, Katasha <Katasha.Cornwell@dot.state.fl.us>
Cc: Gonzalez, Rafael <rafael_gonzalez@fws.gov>; Mark Cantrell <mark_a_cantrell@fws.gov>; Watts, Jason <Jason.Watts@dot.state.fl.us>
Subject: Re: [EXTERNAL] Species Consultation Keys - Request to Update List

EXTERNAL SENDER: Use caution with links and attachments.

Hello Katasha,
Mark and I just discussed these updates. We agree we should amend the list to include the May 13, 2019, manatee key. I expect we will amend the list again in the coming months as we produce more keys. Is this email sufficient to document the agreement to update it for now? If not, we can exchange letters. Let us know what documentation you need.

Thank you,

Larry

On Tue, Aug 13, 2019 at 8:26 AM Cornwell, Katasha <Katasha.Cornwell@dot.state.fl.us> wrote:

Mr. Williams,

Through our previous correspondence in December 2018 regarding FDOT use of species consultation keys, we are respectfully requesting to amend the list of "Species Effect Determinations Keys commonly used by FDOT" to include the May 13, 2019 Addendum to the Florida Manatee Key Programmatic Biological Opinion. A copy of our previous correspondence, the manatee key addendum and the updated list is attached for your review.

Please let me know if additional information is needed to support this request.

Thank you for the continued partnership.

Respectfully,

Katasha

Katasha Cornwell
State Environmental Process Administrator
Office of Environmental Management
Florida Department of Transportation
605 Suwannee Street, MS-37
Tallahassee, FL 32399
Tel: (850) 414-5260

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Larry Williams
State Supervisor for Ecological Services
U.S. Fish and Wildlife Service
1339 20th Street
Vero Beach, FL 32960-3559
Ph: 772-469-4285
Fax: 772-778-0683
larry_williams@fws.gov

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.\u8203 ?