

United States Department of the Interior



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

April 9, 2015

James Giattina
U.S. Environmental Protection Agency
Director
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

Service CPA Code: 2015-CPA-0172
Service Consultation Code: 2015- TA-0105
Applicant: Environmental Protection Agency
Project: Cudjoe Key Regional Water
Quality Improvement Project
County: Monroe

Dear Mr. Giattina,

The U.S. Fish and Wildlife Service (Service) has recently become aware the U.S Environmental Protection Agency (EPA) has in part or whole contributed funding through the State Revolving Funds program to Monroe County and the Florida Keys Aqueduct Authority to build the regional wastewater treatment project on Cudjoe Key in Monroe County, Florida. Section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires Federal agencies to consult with the Service to ensure they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

The construction and operation of the Cudjoe Key wastewater treatment project was recently brought to the Service's attention by concerned citizens. The Service is concerned the operation of the project as currently proposed has the potential to affect species listed under the Act. We request the EPA develop a project description and determine whether the proposed action may affect listed species or designated critical habitat and contact the Service to initiate consultation under section 7. Consultation may be concluded informally or formally depending the affects to species and their critical habitat.


Presently the EPA is in danger of violating section 9 of the Act that prohibits the taking of endangered species of fish and wildlife. Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not

limited to, breeding, feeding or sheltering. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

The Service acknowledges that the Florida Department of Environmental Protection (DEP) contacted the Service in January 2013 regarding the regional wastewater system. In DEP's electronic mail it noted that the County was already in the process of construction. Consultation under section 7 is between Federal agencies and section 7(d) of the Act requires that after initiation of consultation the Federal action agency may not make any irreversible or irretrievable commitment of resources that limits future options. This practice insures agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of endangered or threatened species or destroying or modifying their critical habitats. We understand the Service did not respond to DEP's electronic mail. The EPA should not consider our lack of response to an electronic email from a State agency as sufficient documentation the Service concurs that the project is not likely to adversely affect species protected by the Act. As a reminder, because the Service does not exempt take after-the-fact the EPA should have contacted the Service for review of the action and initiation of consultation prior to commencement of construction.

We request the EPA contact Ashleigh Blackford or Brian Powell of our South Florida Ecological Services Office (772-562-3909) immediately to discuss the appropriate next steps for this project and future projects funded through the State Revolving Funds Program. Thank you for your cooperation in the effort to conserve fish and wildlife resources.

Sincerely yours,


for

Donald (Bob) Progulske
Everglades Program Supervisor
South Florida Ecological Services Office

cc: electronic only

DEP, Tallahassee, Florida (Pankaj Shah)
EPA, Atlanta, Georgia (Sheryl Parsons)
FKAA, Key West, Florida (Kirk Zuelch)
Monroe County, Marathon, Florida (Michael Roberts)
Service, Big Pine Key, Florida (Nancy Finley)
Service, Miami, Florida (Dave Pharo)