FL Assumption ESA meeting

Feb 18, 2020

Attendees: Kelly Laycock (EPA), Heather Mason (FDEP), Heath Rauschenberger (USFWS), Jennifer Goff (FWC), Jason Hight(FWC), Dean Goodin (GHD) Ken Mierzwa (GHD), Mary Duncan (FDEP), Doug Beason (FDEP), Stephanie Gray (FDEP). On the Phone/webinar: Kathy Hurld (EPA), Alexis Wade (EPA), Kavita Nagrani (EPA), Matt Hicks (EPA), Jay Herrington (USFWS), additional GHD staff

Summary

FDEP held a meeting in Tallahassee to discuss assumption updates and draft Biological Assessment (BA). FDEP opened the meeting by informing everyone the NOPR was to be published on 2/19/20. FDEP indicated that if there were no challenges EPA should expect a 404 assumption package in 3 months. There was brief discussion of the 404 Handbook. USFWS staff had comments on the handbook suggesting the addition of references to the *USACE Source Book* and the *Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act* to 1.3.3 Endangered Species Authorizations. FWC staff voiced concerns of not yet seeing the rule or the 404 Handbook and their ability to coordinate comments without requiring official letter in the 21-day comment period.

GHD staff lead the discussion of the draft BA, indicating it would very closely follow the format of the 316b BA. The draft BA will be submitted to FDEP on 2/24/20 and FDEP indicated they would quickly forward this to the Services, FWC, and EPA. They've asked that agencies submit comments on the draft within 30 days of receipt. EPA would additional have an opportunity to comment during the March 4/5 face to face meeting scheduled in Tallahassee.

Considerations

- FDEP indicated that upon program approval there would be a planned 6-month delay in implementation to allow for training, etc.
- FWC raised concerns of coordination on state imperiled species (can these be addressed in BA or must it only cover federal species?)
- The draft BA contained a flow chart which is confusing and needs work (copied below)
    - Language used in some steps- "informal consultation" which may need to be changed
    - Step 4- if Likely to Adversely Effect the project is kicked to Corps for formal consultation. This may be skipping steps as the whole permitting process would be off-ramped to Corps and not necessarily formal consultation
- Draft BA appears to base incidental take on Corps permitting from the past 5 years. This raises question of scope of the BA- program assumption vs permit impacts
- Does package submission require final rule? Package can be submitted with draft rule but determination of a complete package and the start of the 120day review clock would not begin until rule is final.