

FINAL

**National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Southeast Region, Habitat Conservation Division
Fiscal Year 2005 Annual Report to
Florida Department of Transportation
May 8, 2006**

I. Purpose of the Report

In early 2004, the Florida Department of Transportation (FDOT) implemented the Efficient Transportation Decision Making (ETDM) process. During federal fiscal year 2005, through funding from FDOT, NOAA's National Marine Fisheries Service (NMFS), Southeast Regional Office (SERO), hired two full-time term employees. These employees were assigned to the SERO Habitat Conservation Division (HCD) to review FDOT projects under the ETDM process. This report compares the extent and outcomes of the coordination between FDOT and NMFS before and after establishment of the ETDM process with respect to the mission and goals of each agency.

II. Before ETDM

Prior to establishment of the ETDM process between FDOT and NMFS, two divisions within the NMFS SERO reviewed information on FDOT projects. The HCD consults with Federal action agencies regarding potential adverse effects of their actions on essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); HCD also comments to the action agencies on potential impacts to living marine resources under the Fish and Wildlife Coordination Act. HCD biologists regularly reviewed proposed FDOT projects and provided Federal action agencies, usually the U. S. Army Corps of Engineers (COE), with conservation recommendations to alleviate adverse impacts to EFH or living marine resources that might occur from the proposed projects. The SERO Protected Resource Division (PRD) administers provisions of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). Similar to the reviews conducted by HCD, biologists from PRD regularly reviewed information on FDOT projects with ESA and MMPA concerns. As a result of this organizational arrangement, many FDOT projects were reviewed by two or more NMFS biologists (at least one from HCD and one from PRD), triggering separate consultation letters to Federal action agencies.

Information on FDOT projects that had ESA concerns was sent to the SERO PRD office in St. Petersburg, Florida, passed to the ESA Branch Chief, and then to the Section 7 Coordinator to be distributed to the appropriate PRD biologists. Information on FDOT projects that had EFH concerns was sent to HCD's field office in Panama City and given to the Florida Branch Chief, who was responsible for distributing FDOT projects to HCD biologists.

In 2001, HCD divided Florida into two geographic areas to facilitate project reviews. The Atlantic Branch, with area offices in Miami and Jacksonville, addressed projects along the Atlantic coast of Florida. The Gulf Branch, through its Panama City Field Office and St. Petersburg Area Office, examined projects along the Gulf coast of Florida.

As Florida's population grew, workload increased and NMFS needed more biologists to review an increasing number of projects. PRD hired new biologists in St. Petersburg, and PRD biologists prioritized their workload based on the completeness of the information in the section 7 consultation packages and the likely magnitude of the effects to ESA-listed species from the proposed project. HCD biologists similarly prioritized their workload based on the expected magnitude of adverse effects to EFH and managed fishery species. Because funds to hire more biologists were limited, and as the workload continued to increase, greater attention was given to projects expected to have large impacts to NOAA trust resources.

Prior to ETDM, FDOT staff and contractors sent information to NMFS SERO in several forms, including Advanced Notification Letters (AN Packets), Environmental Assessments, Environmental Impact Statements, public hearing letters, public notice letters, requests for agency coordination meetings, technical memoranda, and emails. NMFS SERO also received information on FDOT projects from the U.S. Coast Guard (USCG) and the COE through the Public Notices or letters from the Federal Highway Administration (FHWA).

Due to the limited information provided in AN Packets, reviews of many FDOT projects would conclude with minimal comments from SERO. For example, if the HCD biologist found that the proposed project had minimal impacts on estuarine habitats, comments consisted of the standard language regarding avoidance, minimization, and mitigation. If the proposed project appeared likely to have significantly adverse impacts on estuarine habitat, the HCD biologist requested an EFH assessment, mitigation plan, and continued coordination. PRD biologists would identify the ESA-listed species likely to be affected by the project and provide FDOT with requests for any additional information that was needed to conclude ESA section 7 consultation. In most instances NMFS SERO's level of involvement was minimal during development of the proposed project, and most information regarding FDOT projects was received during the USCG or COE permitting process via a Public Notice. At this stage, it was difficult for FDOT to consider and address NMFS' concerns because the project designs were nearly complete and ready for implementation. Significant issues discovered at this late stage could delay project implementation, possibly leading to loss of funding from FHWA or increased project costs, especially if compensatory mitigation were required to offset adverse effects to EFH or design modifications were needed to achieve compliance with the ESA.

III. After ETDM and MOA

By 2004, PRD and HCD had limited staff and no additional funding to accommodate the increase in the overall workload of the two divisions. HCD had reorganized into two

branches, each with its own supervisor, to more efficiently handle the workload. The Atlantic Coast Branch supervisor oversees biologists located in the Jacksonville and Miami Field Offices, and the Gulf Coast Branch supervisor oversees biologists located in the SERO St. Petersburg office and the Panama City Field Office. PRD prioritized their workload and brought in personnel from other NMFS offices on a time-limited condition to accommodate the workload.

On June 27, 2004, the Memorandum of Agreement (MOA) between FDOT, FHWA, and NMFS was signed. The HCD hired two full-time term employees to exclusively review FDOT projects and meet the requirements listed in the NMFS Agency Operating Agreement of the MOA. These two NMFS biologists are members of the FDOT Environmental Technical Advisory Team (ETAT), which the ETDM process established. FDOT personnel now deal with only these two NMFS biologists for technical assistance, advice, and comments on FDOT projects. These two biologists coordinate as needed with other NMFS personnel to obtain information, guidance or advice needed to complete NMFS review of FDOT projects. The NMFS biologist for the Atlantic Coast handles FDOT Districts 4, 5, 6, and the eastern half of District 2, while the NMFS biologist for the Gulf Coast handles FDOT Districts 1, 3, 7, and the western half of District 2. Each biologist conducts both the EFH and ESA section 7 consultations for their respective FDOT project areas.

A main focus of the ETDM process is early coordination between FDOT and the agencies responsible for reviewing FDOT projects. The goal is for FDOT staff and consultants to interact with NMFS ETAT members as early as possible to assure that adverse impacts to NOAA trust resources are avoided, minimized, or mitigated, and that appropriate conservation measures and other provisions are included when needed. Ideally, coordination begins when the project is in the conceptual stage, allowing FDOT to generate more accurate cost and schedule projections as the project moves into the design phase. Under the ETDM process, FDOT should have a good understanding of each project's EFH and ESA issues well before the design stage is completed and the USCG and COE permit application process begins. At present, the projects reviewed by the two NMFS biologists include projects from both the old and new FDOT processes. However, eventually all major FDOT projects should be developed and reviewed using the ETDM procedure.

Presently, the NMFS ETAT members review all FDOT projects in the state, and all projects are examined for potential impacts to NOAA trust resources. The AN Packets, Environmental Assessments/Environmental Impact Statements, and ETDM project descriptions and resource maps are thoroughly reviewed, and NMFS SERO provides responses via letters, emails, field reviews, or online submissions that use the Environmental Screening Tool (EST).

Since the MOA was implemented and up through September 30, 2005, the two NMFS ETAT members entered the ETDM process, they have reviewed, conducted site visits, attended meetings, and provided comments and recommendations regarding 224 FDOT projects including 119 in the ETDM process, 60 in Project Development and

Environment, and 45 in the permitting stage (Table 1). Each NMFS ETAT member averages nine projects per month; the busiest quarters were April-June and July-September 2005. Unfortunately, these numbers could not be compared to the number of FDOT projects reviewed prior to the ETDM process for this report. However, as a sign of the success of the ETDM process, NMFS ETAT members have not needed to initiate the Dispute Resolution Process because most projects are reviewed in early stages, which allows FDOT staff sufficient time to address NMFS concerns on EFH and ESA issues.

Table 1: Summary of FDOT Projects Reviewed by NMFS ETAT Members after Implementation of the ETDM Process

	Oct 2004 – March 2005	April – June 2005	July – September 2005	Total
EST	15	58	46	119
PD&E	-	43	17	60
Permitting	5	31	9	45
Total	20	132	72	224

IV. Effects of the ETDM Process

The ETDM process brought change to both FDOT and NMFS SERO. The MOA provided funding for two full-time, term NMFS SERO employees to exclusively review FDOT projects. The two new NMFS biologists allowed the ETDM process to work as envisioned, with early and frequent coordination between FDOT and NMFS. NMFS concerns on EFH and ESA issues are addressed and incorporated into the project designs beginning at the conceptual stage and continuing through to the implementation stage. Early coordination avoids disputes and resource issues from being raised too late in the design process to be adequately addressed. Early coordination will result in better cost and schedule estimates, fewer late-stage design modifications, fewer delays on projects that are ready for implementation, and smaller impacts to NOAA trust resources. The ETDM process assures NMFS SERO participation in the avoidance, minimization, and mitigation of impacts to NMFS trust resources, while FDOT staff benefit from having every project reviewed by NMFS and having one NMFS contact person for each project from the conceptual to the implementation stages. In addition, the Environmental Screening Tool developed for ETDM makes pertinent information and project history easily accessible, which makes it easier for NMFS staff to review FDOT projects. ETAT district meetings allow participating agency to share information more readily, further improving the process.

V. Benefits of ETDM Process to NMFS

The ETDM process has resulted in a number of improvements in NMFS' business approach to delivering services relative to transportation projects in the state of Florida. These benefits include:

- Early involvement in FDOT projects, making it easier to come to agreement on acceptable project design features for protecting NMFS' trust resources

- Early coordination in projects enables development of more detailed information on likely impacts
- Continuous consultation enables both agencies to make adjustments over time as project design and construction progress with least impact on budget and/or timelines
- Enhanced funding to participate in a more focused way on project review
- Increased communication and coordination with FDOT
- On going training develops enhanced understanding by both agencies' of the others' roles, responsibilities, statutory authorities, and limitations
- Increased knowledge of FDOT processes and regulations
- Enhanced protection and conservation of fishery habitat through cooperative permit review and design change at an early stage of project development.

VI. Areas of Improvement and Suggestions

The MOA requires NMFS ETAT members to submit quarterly reports. One part of the report requests a list of problems and suggestions. Since FDOT is immediately addressing NMFS concerns on the EST and incorporating suggestions on improving the ETDM process, NMFS does not have additional suggestions at this time, except to continue the coordination, performance review process, summer sessions, and District ETAT meetings. Administratively, NMFS and FDOT may wish to discuss how adjustments to the annual budget may be made over the course of the upcoming five-year renewal of the Funding Agreement. We should also examine proposed reporting requirements and mechanisms to ensure that needed information is provided without imposing unnecessary duplication of effort for both NMFS and FDOT.