

## CONCEPTS FOR “EXISTING FACILITY” DISCUSSION

- It is not the intention of the Manatee Protection Plan to impose new limitations on the continuing operation of facilities already operating lawfully, even if the facility occurs within sensitive manatee habitat.
- It is assumed that the renovation, repair, or reconfiguration of berths or mooring structures at a facility or site that is lawfully in use does not constitute a new or increased impact on manatees, provided that the number and types of vessels using the facility and frequency of vessel activities remains substantially the same.
- There may be circumstances, such as natural disasters, fire, or financial matters, that temporarily render a marine facility inoperable. Such facilities should be allowed to rebuild, even if the facility occurs within what is now known to be sensitive manatee habitat.
- A lawfully operating marine facility at a particular site should be permitted to continue operation, undergo repairs and renovation, change ownership or business model so long as the number and types of vessels using the facility does not substantially change.
- A berthing or mooring facility that has been constructed or operated without required approvals or in violation of regulations should not receive the same consideration as those that remain in compliance, and may not necessarily be allowed to rebuild or continue operations as in the past.
- These concepts are based on principles of fairness and traditional uses of waterfront property, not a biological determination that types or numbers of vessel impacts associated with those facilities represent an “acceptable” level of impact on manatees.
- In order to implement these concepts, it is necessary to determine the number, type, and frequency of vessel uses associated with a site at the time of permit approval.
- It has become increasingly difficult to objectively determine past number, type, and frequency of vessel use at sites that have not been in operation for extended periods of time, or where there are no remaining functional berthing or mooring structures.
- Vessel trips to and from sites located in sensitive manatee habitat, but where no vessel use or functional berthing or mooring structures have been in place at any time over the recent past represent potential increases in impacts to manatees.
- *An “existing marine facility” is one that is currently operating lawfully, or has been in use and possessed all required regulatory approvals at any time during the recent past.*
- A “rolling date”, such as “{X} years prior to application for construction or operation” would allow for rebuilding or renovation of berthing or mooring facilities at sites with *bona fide*, lawful traditional vessel uses, but provide a more practical objective time frame for determining the nature of the past vessel use. Continuous operation, or continuously active operating permits, during this defined period would NOT be required.
- Sites that have had no vessel use or functional berthing or mooring structures at any time during this defined period would not be considered to be “existing facilities”, and would be subject to manatee protection facility siting criteria for new or expanded facilities.