

## Attachment A: Procedure for “Phase-In” of implementation of “existing facility” definition

Under the 1995 Manatee Protection Plan and the proposed updated MPP, “existing facilities” may rebuild, renovate or make repairs, subject to all other applicable regulatory requirements, even if they are located within an area now understood to be essential habitat for manatees. The proposed revisions to the MPP include a change in the working definition of an “existing facility”. Under the 1995 MPP, a facility or slip that had been in lawful operation at any time since October 28, 1984 would be considered “existing”, even if it had not been in use for decades. Under the new working definition, facilities and the slips to be rebuilt or reconstructed must have been in legal operation within the five-year period prior to an application. This means that historical facilities, which may have operated in the past but have not been in use for longer than 5 years, would be reviewed under guidelines for new facilities. To provide an opportunity for property owners who have presumed that historical slips could be rebuilt at a particular parcel, implementation of the new working definition will be phased in, according the following procedure. The procedure affords a specified time for property owners to obtain a determination and complete applications for the number of slips that may be reconstructed using dates in the former definition.

- The proposed revision of the definition of “existing facility” would go into effect two years after approval of this MPP revision. During this two-year phase-in period, for facilities that have not been in operation within the past five years, owners would have the opportunity to apply for Class I permits and all other required approvals to re-establish a facility and wet/dry slips that have been damaged, abandoned or are not operating. The number and type of slips that could have been reconstructed under the old guideline would then be set, and qualify as the baseline under the new review guideline. It would not be necessary to actually build-out the facility, but the ability to obtain the required permissions would be the determining factor for subsequent reviews and requests related to the site.
- For property owners not yet wanting to go through the permitting process, the phase-in period could also afford them the opportunity to seek a binding letter from the department. At the owner’s request, the binding letter can contain details including how many slips the department has been able to determine are currently present and/or were historically present at a site based on the information available and, identify other major permitting factors unrelated to manatee protection (eg. navigation safety or submerged land ownership) that may affect the number or types of slips that could be rebuilt at the site based on regulations in place at the time of issuance of the binding letter.
- Whether slips could be transferred from a particular facility (“donor site”) would depend on a proposal coupled to a recipient site. A proposal related to the donor and recipient site would be evaluated with the proposed transfer criteria and, for slips no longer in actual use, whether they are “existing marine facility slips” as identified under the “phase-in” period guideline or active definition.
- Written determinations made by the department during the “phase-in” period would remain in effect for three (3) years from the date of issuance by the department. If a complete County permit application, which addresses relevant requirements of Sec. 24-48.3, is not made during that time to formally transfer slips or to reconstruct them at the original site, then the slips would no longer be viewed as “existing”. Applications related to the site would thereafter be reviewed in accordance with guidelines and definitions in effect at the time of application. Note that this section does not require completion of all regulatory approvals within the specified time frame.
- In addition to the above “phase-in” period, if a property owner has relied upon written, site-specific representations from the Department of ability to transfer a specific number of slips from a given donor facility or location, prior to the revision of the MPP guidelines or definition of “existing marine facility”, then the owner may submit an application to the department for transfer of those slips.