

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WILDLIFE FEDERATION, *et al.*,
Plaintiffs,
v.
GALE NORTON, Secretary, U.S. Department of the Interior, *et al.*,
Defendants.

: Civil Action No. 03-1393 (JR)

ORDER

Upon consideration of the parties' cross-motions for summary judgment, it is

ORDERED that the motions of defendants and defendant-intervenor for summary judgment [23] and [24] are **DENIED**, except with respect to the United States Army Corps of Engineers' (Corps) compliance with Section 7(a)(1) of the Endangered Species Act (ESA), as to which defendants' motion [23] is **GRANTED**. It is

FURTHER ORDERED that plaintiff's motion for summary judgment [18/20] is **GRANTED**, except with respect to the following: (a) the Corps' compliance with Section 7(a)(1) of the ESA, as to which plaintiffs' motion [18/20] is **DENIED**; (b) the Corps' compliance with Section 7(a)(2) of the ESA, the Administrative Procedure Act (APA), and the Clean Water Act (CWA) in issuing the Environmental Assessment and Statement of Findings (EA/SOF) for the Fort Myers Mine #2, as to which plaintiffs'

motion [18/20] is **DENIED AS MOOT**; and (c) certain specific forms of relief requested by plaintiffs. It is

FURTHER ORDERED that the Biological Opinion (BiOp) for the Fort Myers Mine #2 is declared invalid in violation of the Administrative Procedure Act and remanded to the United States Fish and Wildlife Service for reconsideration. It is

FURTHER ORDERED that the EA/SOF for the Fort Myers Mine #2 is declared invalid in violation the National Environmental Policy Act and remanded to the Corps for reconsideration. And it is

FURTHER ORDERED that the 404(b) permit issued to Florida Rock Industries by the Corps for the Fort Myers Mine #2 is declared invalid.

JAMES ROBERTSON
United States District Judge