

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

PERSONAL WATERCRAFT INDUSTRY
ASSOCIATION, INC., et al

Plaintiffs

vs.

CASE NO. _____
MAGISTRATE JUDGE: _____

MONROE COUNTY, FLORIDA

Defendant.

AFFIDAVIT OF
JAMES A. RODGERS, JR.

STATE OF FLORIDA

COUNTY OF _____

)
) SS:
)

BEFORE ME, the undersigned authority, personally appeared
JAMES A. RODGERS, JR., Ph. D., who, after being first duly sworn,
deposes and states:

1. My name is JAMES A. RODGERS, JR. I am a Wildlife
Biologist with the Florida Game and Freshwater Fish Commission in
Gainesville, Florida. I received my B.A. from the University of
South Florida, my M.S. in Zoology from Louisiana State University,
and my Ph.D. in Biology from the University of South Florida.

2. I have conducted research on the behavior, demo-
graphics and ecology of herons and wood storks.

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3. In conjunction with the Florida Department of Environmental Protection, Florida Park Service, I have conducted research to determine minimum buffer zones that minimize flushing of foraging or loafing waterbirds from human disturbance in Florida. Our article, "Buffer Zone Distances to Protect Foraging and Loafing Waterbirds from Human Disturbance in Florida", a copy of which is attached hereto, appeared in WILDLIFE SOCIETY BULLETIN 1997, Vol. 25(1), pp. 139-146. We researched the reaction of non-breeding waterbirds to four types of human disturbances, foot approach, all terrain vehicles, automobile and outboard motorboats.

4. I have also conducted research into minimum buffer zones to protect breeding colonial waterbirds from human disturbance of their high density nesting habits. A copy of our article, "Set-Back Distances to Protect Nesting Bird colonies from Human Disturbance in Florida", a copy of which is attached hereto, appeared in Vol. 9, CONSERVATION BIOLOGY, No. 1, February 1995, pp. 89-99.

5. As a result of our research, we concluded that a minimum buffer zone, or set-back distance, of about 100 meters for wading bird colonies, and 180 meters for mixed tern/skimmer colonies, should adequately buffer the sites we studied from human disturbance, caused by approach of pedestrians and motorboats, when the colonies are breeding or nesting.

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6. I am currently conducting research on buffer zone distances to protect waterbirds from disturbance by personal watercraft. The study is being conducted somewhat differently than the previous studies since the outboard motorboats in those studies were moving at idle speed and obliquely to the birds. In the personal watercraft study, we are operating the personal watercraft on a plane at speed and moving them directly at the birds. We have found the personal watercraft to be relatively quiet to the point where their noise is not the factor which causes the birds to flush. The birds visually acquire a fast moving object coming at them and see the white spray being thrown off by the deep "V" bow and react by flushing. A personal watercraft moving at idle speed obliquely to the birds should produce the same flushing response as an outboard motorboat. Similarly, a fast moving motorboat heading directly at the birds with a deep "V" bow throwing white spray should produce a flushing response similar to that of a personal watercraft being operated in a similar manner.

7. Taking into consideration the most sensitive birds in the flock of any given species of waterbirds and adding a little extra distance as an additional margin, a distance of 150 yards would be quite adequate as a minimum buffer zone, or set-back distance, to protect foraging, nesting and loafing waterbirds in the Florida Keys from disturbance by vessels of all types whether moving at idle or high speed or approaching the birds obliquely or

directly. A 150 yard set-back is actually a huge distance when measured in terms of a buffer zone. I am unaware of any scientific or biologic basis which would require a buffer zone of 1200 feet to protect waterbirds or their rookeries from disturbance.

8. I have reviewed the regulations adopted by the Florida Keys National Marine Sanctuary with regard to the protection of nesting bird colonies and waterbirds. These regulations prohibit operating a vessel in such a manner so as to injure or take wading, roosting or nesting birds. The regulations of the Florida Keys National Marine Sanctuary also prohibit the operation of all vessels, except at idle speed only/no wake, within 100 yards of residential shorelines and within designated wildlife management areas. Portions of other wildlife management areas are designated as no motor, no access, or no wake zones for all vessels.

9. Based on my research, background, training and experience, I find the set-back distances, minimum buffer zone distances, and other regulations put in place by the Florida Keys National Marine Sanctuary, to protect nesting bird colonies and to protect foraging and loafing waterbirds from human disturbance, to be adequate for vessels passing along the shoreline obliquely. As outlined above, a minimum buffer zone distance of 150 yards for all vessels would provide an additional margin to minimize disturbance of water birds from fast moving vessels moving directly at the birds, especially those throwing spray from a deep "V" bow.

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FURTHER AFFIANT SAYETH NOT.



Terri Lee Steele
MY COMMISSION # 00564483 EXPIRES
January 18, 2001
10000 10461 TROY TOWN BIRMINGHAM, AL.

James A. Rodgers, Jr.
JAMES A. RODGERS, JR., Affiant

Sworn to and subscribed before me
this 10 day of August
1998.

My Commission Expires:
01-18-01

Terri Lee Steele
NOTARY PUBLIC
State of Florida at Large
Terri Lee Steele
Printed Name of Notary Public

Personally Known or
~~Produced Identification~~
(Type of Identification
Produced) _____

Attachments:

- (a) "Buffer Zone Distances to Protect Foraging and Loafing Waterbirds from Human Disturbance in Florida", WILDLIFE SOCIETY BULLETIN 1997, Vol. 25(1), pp. 139-145
- (b) "Set-Back Distances to Protect Nesting Bird colonies from Human Disturbance in Florida", appeared in Vol. 9, CONSERVATION BIOLOGY, No. 1, February 1995, pp. 89-99