

Cooperative Agreement

between the

United States Department of the Interior
Fish and Wildlife Service

and

Florida Fish and Wildlife Conservation Commission

for the Conservation of

ENDANGERED AND THREATENED FISH AND WILDLIFE

This Cooperative Agreement is entered into pursuant to Section 6(c) of the Endangered Species Act of 1973, as amended, 16 U.S.C. §1531-43 (hereinafter referred to as “the Act”), and pursuant to Article IV, Section 9, Florida Constitution, between the U.S. Department of the Interior Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission. Hereinafter, the parties shall be referred to as the FWS and the Commission, respectively.

WHEREAS, the parties acknowledge that the Commission possesses the authority and jurisdiction over endangered and threatened fish and wildlife in upland, freshwater and marine environments; and

WHEREAS, the parties had previously entered into a Cooperative Agreement on July 18, 2001, which agreement is superceded by this Cooperative Agreement; and

WHEREAS, the Congress of the United States has found that there are resident species of fish and wildlife which are in danger of extinction and that these species are of aesthetic, ecological, educational, scientific, economic and other value to the Nation and its people; and

WHEREAS, the purposes of the Act are to provide a means to encourage the protection and conservation of the ecosystem upon which endangered and threatened fish and wildlife depend, to provide a program for the conservation of such species and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of fish and wildlife; and

WHEREAS, the Congress of the United States has declared that encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and

international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in its fish and wildlife resources; and

WHEREAS, the Secretary of the Interior has delegated his responsibilities under the Act to the Director and Regional Director, FWS; and

WHEREAS, the Regional Director, FWS, desires to enter into this Cooperative Agreement for the purpose of assisting in the implementation of the endangered and threatened fish and wildlife species conservation program of the State of Florida, for fish and wildlife species under his jurisdiction pursuant to the Act; and

WHEREAS, the Commission has the responsibility to conserve endangered and threatened fish and wildlife which are resident in the State of Florida; and

WHEREAS, the State of Florida, acting through the Commission, wishes to administer its program for the conservation of endangered and threatened fish and wildlife in harmony with the terms and spirit of the Act; and

WHEREAS, the parties agree that programs of the State of Florida are designed to assist endangered and threatened fish and wildlife and that it is the mutual desire of the Commission and the FWS to work in harmony for the common purposes of planning, developing and conducting programs to protect, manage and enhance the populations of all resident endangered and threatened fish and wildlife within the State of Florida; and

WHEREAS, the Regional Director, FWS, has the statutory and administrative responsibility to establish authorized programs for the conservation of endangered and threatened species of fish and wildlife; to provide periodic review of the approved State programs at no greater than annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Acts; to provide coordination among the programs of the various States and Territories; and to exchange with the Commission such biological data or other information which may result in the enhancement of the opportunities for the continued survival of endangered and threatened species of fish and wildlife; and

WHEREAS, the Commission (a) has the authority to conserve fish and wildlife determined by the Commission or the Secretary of the Interior to be endangered or threatened; (b) has established acceptable conservation programs, consistent with the purposes and policies of the Act, for all fish and wildlife in the State of Florida which are deemed by the Secretary to be endangered or threatened and has furnished a copy of such a program together with all pertinent details, information, and data requested to the Secretary; (c) has the authority to conduct investigations to determine the status and requirements for survival of all fish and wildlife; (d) has the authority to establish programs including the acquisition of land or aquatic habitat or interests therein, for the conservation of endangered and threatened fish and wildlife; and (e) has provided for public participation in designating fish and wildlife as endangered or threatened.

NOW, THEREFORE, the parties agree as follow:

1. Cooperation

- a. The Commission will carry out the activities identified in its conservation program for the benefit of endangered and threatened fish and wildlife in the State of Florida.
- b. The parties agree to cooperate in the development of programs, plans, and projects for the conservation of species of fish or wildlife in the State of Florida that are listed as endangered or threatened by the State or the FWS, as well as species that may be listed in the future. Activities include but are not limited to: biological planning, conservation design, program development and delivery, monitoring, and research in the development and implementation of landscape-level conservation plans; future conservation needs of species in consideration of accelerated climate change; and coordination, development and implementation of species management plans and recovery plans to promote consistency and effectiveness in conservation efforts with stakeholders.
- c. The Regional Director, FWS, will provide financial assistance to the Commission for the implementation of acceptable projects for the conservation of endangered and threatened fish and wildlife. Such financial assistance will be contingent upon the availability of funds and will require the submission of an Application for Federal Assistance and the successful negotiation of a Grant Agreement. These will comply with the Secretary's Rules and Regulations, 50 CFR §81, and the FWS's Federal Aid Handbook.
- d. As a part of this cooperative program, the law enforcement authorities of the FWS and the State of Florida will cooperate in the detection, apprehension and prosecution of violators of the Act or of any State law intended to conserve endangered or threatened fish and wildlife.
- e. It is understood that any Federal funding pursuant to §6(d) of the Act is contingent on the Commission's continued implementation of adequate and active programs for the conservation of federally listed endangered and threatened fish and wildlife in the State of Florida, as defined at 50 CFR §81.1(p). If the program for the conservation of any such species is determined by the Regional Director, FWS, to be inadequate or inactive, this Cooperative Agreement and funding shall be terminated in accordance with §§5 or 7 of the Cooperative Agreement.

2. Take of Endangered and Threatened Wildlife

a. General Rule

1. The Commission agrees to not engage in, or issue a permit authorizing, the taking of resident federally listed endangered and threatened fish and wildlife, without such taking requiring prior issuance of a permit to the applicant, as may be required by the Regional Director, FWS, prior to engaging in permitted activities, except as authorized in subsections 2.b., c., d. and e. of this Cooperative Agreement, or pursuant to a special rule in 50 CFR §§17.40-48.
2. With respect to the importation or exportation of, or interstate or foreign commerce in, federally listed endangered and threatened species of fish or wildlife, the Commission agrees not to permit what is prohibited by the Act or any regulation issued thereunder.
3. Any person holding a permit issued in accordance with this section 2, shall:
 - Assume all liability and responsibility for the conduct of any activity conducted under the authority of such permit and
 - Comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity.
4. Subsections 2.b., c., and d. of this Cooperative Agreement are intended to be authorizations for the Commission to issue permits as contemplated by 68A-27.007(1), F.A.C.

b. Conservation permits for Endangered Wildlife

Any qualified employee, agent or so designated agent of the Commission may, when acting in the course of official duties, take or issue a permit authorizing the take of any federally listed endangered fish and wildlife for conservation purposes that are consistent with the purpose of the Act, and with this Cooperative Agreement or any Grant Agreement attached hereto, provided that such taking is not reasonably anticipated to result in:

1. the death or permanent disabling of the specimen;
2. the removal of the specimen from the State of Florida
3. the introduction of the specimen or any of its progeny into an area beyond the historical range of the species; or
4. the holding of the specimen in captivity for a period of more than 45 consecutive days.

c. Conservation permits for Threatened Wildlife

Any qualified employee, agent or so designated agent of the Commission may, when acting in the course of official duties, take or issue a permit authorizing the take of any federally listed threatened fish and wildlife for conservation purposes that are consistent with the purposes of the Act. The authority conveyed to the Commission by this subsection may, at any time, be temporarily suspended for a particular project or conservation program by written notification from the Regional Director, FWS, upon his/her receipt of substantial evidence demonstrating the use of the authority for purposes inconsistent with the purposes of the Act. Upon notification of the temporary suspension and the reason therefore, the Commission may request from the Director, FWS, an opportunity to demonstrate compliance with the purposes of the Act. The Director shall promptly consider the evidence so submitted by the Commission and either reaffirm the conclusion of the Regional Director, FWS, and revoke the authority temporarily suspended pursuant to this subsection, or reverse the conclusion of the Regional Director, FWS, and reinstate the authority temporarily suspended.

d. Incidental Take permits for Endangered and Threatened Wildlife

Pursuant to Section 6 of the Act, any qualified employee of the Commission when acting in the course of official duties may issue a permit authorizing take of resident federally listed endangered or threatened fish or wildlife incidental to and not the purpose of an otherwise lawful activity provided:

1. the species is covered by a permitting guideline that is appended to this Cooperative Agreement pursuant to the provisions of subsection 6.b. of this Cooperative Agreement and the permitted activity is consistent with that permitting guideline which provides

impact avoidance, minimization, and mitigation measures in a manner consistent with the conservation of the species;

2. the permit satisfies the more stringent of issuance criteria for federally listed endangered and threatened species at 50 CFR 17.22 (b)(2), 17.32 (b)(2) or state endangered and threatened species at 68A-27, F.A.C.;
3. the permit provisions are enforceable by both the FWS and the Commission;
4. the authorized take is not otherwise prohibited by other federal treaty or statute beyond the Act; and
5. the Service has conducted intra-Service consultation pursuant to section 7(a)(2) of the Act on the permitting guideline.

e. Emergency Provisions

Any qualified employee, agent or so designated agent of the Commission may, when acting in the course of official duties, take federally listed endangered or threatened fish or wildlife without a permit if such action is necessary to:

1. aid a sick, injured, or orphaned specimen; or
2. dispose of a dead specimen; or
3. salvage a dead specimen which may be useful for scientific study; or
4. remove specimens which constitute a demonstrable but non-immediate threat to human safety; provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed in a remote area.

Any taking pursuant to subsection 2.e. must be reported in writing within 5 days to the Regional Director, FWS, for transmission to the Division of Law Enforcement, FWS, in Atlanta, Georgia. The specimen may be retained, disposed of or salvaged only in accordance with directions from the FWS.

3. Records

The Commission shall maintain records of (1) its Federally funded projects for the conservation of endangered and threatened fish or wildlife in accordance with the FWS's Federal Aid Manual and (2) the numbers of specimens of each federally listed endangered and threatened fish or wildlife taken by the Commission's employees or agents pursuant to subsections 2.b., c., and d. of this Cooperative Agreement, the conservation purposes for which they were taken and any mortalities or permanently disabling injuries resulting from the taking.

4. Notification

The Commission agrees to inform the FWS of any changes in circumstances, which could cause its programs to be out of conformance with the requirements of Section 6(c) of the Act. Included without limitation are changes in the Commission's relevant constitutional, statutory or regulatory authority. The Commission shall promptly furnish to the FWS an assessment of the effect of such a change on the State's ability to remain in compliance with the requirements of Section 6(c) of the Act. The Regional Director, FWS, agrees to notify the State of all regulations and rulemakings, in accordance with Section 4 of the Act, which might affect the adequacy and activeness of the State's program.

5. Effective Date and Renewal

- a. This Cooperative Agreement shall become effective when signed by the Regional Director, FWS, and the Executive Director, Florida Fish and Wildlife Conservation Commission, and may be renewed in the following manner. Not later than August 30th of each year the Commission shall submit to FWS the following items: (1) additions and deletions to the Federal and State listed endangered and threatened fish or wildlife which are resident in the State; (2) a memorandum of law analyzing any changes in the Commission's statutory and regulatory authority for endangered and threatened fish or wildlife which were made since the date of the previous program submission and also analyzing the application of State law to any resident fish or wildlife which have been added to the Federal endangered or threatened fish or wildlife which are being proposed or which have occurred since the date of the previous program submission; (3) a list of any substantial changes in the State's conservation program for resident endangered or threatened fish or wildlife which are being proposed or which have occurred since the date of the previous program submission; (4) a detailed description of the number of specimens of each species of Federally listed endangered or threatened

fish or wildlife taken pursuant to subsections 2(b), (c), and (e) of this Cooperative Agreement, the conservation purposes for which they were taken and any mortalities or permanent disabling injuries resulting from the taking, as well as the number of each species permitted for incidental take pursuant to subsection 2(d); and (5) copies of reports the Commission has prepared since the previous program submission which discuss its conservation program accomplishment for listed endangered and threatened fish and wildlife.

- b. The FWS will, on or before October 1st of each year, notify the Commission in writing either that the Cooperative Agreement is renewed effective October of that year, or that the Commission's endangered or threatened fish or wildlife conservation program or authorities are not in compliance with the criteria of Section 6(c) of the Act and, unless appropriate changes are made by June 30th of the following year, this Cooperative Agreement shall be terminated. If the Commission has not received notification by October 1st that the Cooperative Agreement has been renewed or that the conservation program or authorities are not in compliance with the above referenced criteria, the Cooperative Agreement shall continue in force and effect as if it has been renewed.
- c. For purposes of the Section, the phrase "previous program submission" means either program submission of (1) the original Cooperative Agreement or (2) the most recent renewal application for the Cooperative Agreement, whichever is later in time.

6. Amendment

- a. This Cooperative Agreement may be amended for any purpose at any time with concurrence of the signatory parties. Such amendments will be effective when signed by the Regional Director, FWS, and the Executive Director, Florida Fish and Wildlife Conservation Commission.
- b. Permitting guidelines which will identify the species that the Commission is authorized to issue permits under subsection 2.d. of this Cooperative Agreement and the Commission's responsibilities for issuing those permits will be appended to this Cooperative Agreement after they are developed cooperatively by the parties and signed by the Regional Director, FWS, and the Executive Director, Florida Fish and Wildlife Conservation Commission.

7. Termination

This Cooperative Agreement may be terminated: (a) by mutual agreement; (b) by the Commission upon 60 days written notice to the FWS; or (c) notwithstanding the

renewal provisions in Section 5(b) of the Cooperative Agreement, by the FWS upon 60 days written notice to the Executive Director, Florida Fish and Wildlife Conservation Commission, from the Regional Director, FWS, stating that the State's endangered or threatened fish or wildlife conservation programs are no longer in compliance with the criteria of Section 6(c) of the Act or that the State has violated a provision of this Cooperative Agreement. The Commission may submit a written request for review to the Director, FWS, within 30 days of receipt of the termination notice. The Director, FWS, will consider all evidence submitted by the Commission in its request for review and either reaffirm the conclusion of the Regional Director and terminate this Cooperative Agreement at the end of the 60-day notification period, or reverse the conclusion of the Regional Director and revoke the notice of termination. All Federal Funds which have been obligated to, but not expended by, the Commission as of the date of the termination notice shall be retained by the FWS for reallocation pursuant to Section 6(d) of the Act, unless: (1) those funds are specifically approved by the Regional Director for expenditure before the date of actual termination; or (2) the notice of termination is revoked by the Director, FWS.

8. Suspension of Incidental Take Permitting Authority

Any authority for the Commission to issue Incidental Take permits pursuant to subsection 2.d. of this agreement shall be suspended upon a finding by the Regional Director that the Commission no longer meets the requirements of the Act for an adequate and active program for the conservation of all native endangered species and threatened species (16 U.S.C. 1535(c)), until such time as the Regional Director agrees that the Commission is back in compliance with the requirements of the Act.

9. Defined terms

All terms used in this Cooperative Agreement are intended to have meanings consistent with the Act and regulations implementing the Act and should be given the meaning ascribed in the Act or the implementing regulations when those laws define any term used.

U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

BY: _____
Cynthia K. Dohner

Nick Wiley

TITLE: Regional Director

Executive Director

DATE: _____