

**Environmental Assessment  
Endangered Species Act Section 6 Cooperative Agreement  
between  
Florida Fish and Wildlife Conservation Commission  
and  
U.S. Fish and Wildlife Service  
June 2011**

**INTRODUCTION**

The United States Fish and Wildlife Service (Service) is amending its cooperative agreement (Agreement or Action) with the Florida Fish and Wildlife Conservation Commission (Commission), an agency of the State of Florida, in accordance with Section 6 [16 U.S.C. § 1535] of the Endangered Species Act of 1973, as amended (Act) [16 U.S.C. § 1531 *et seq.*] (see Attachment 1). This Environmental Assessment (EA) is prepared to satisfy the Service's obligations under the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. §§ 4321-4347]. It is intended to function programmatically such that NEPA compliance documents on future actions authorized under the Agreement, specifically the adoption of permitting guidelines (Guidelines) for covered species as discussed below, will tier from this EA.

Section 6 of the Act establishes the cooperative relationship between the Service and the states for the conservation of federally listed endangered and threatened species (listed species). The Secretary of the Interior is mandated to cooperate with states "to the maximum extent practicable" in the conservation of such species. Accordingly, section 6(c) authorizes the Secretary to enter into cooperative agreements for the purpose of "assisting in implementation of the state program" for the conservation of listed species. A section 6(c) agreement also is a prerequisite to the allocation of Federal funds to a state to assist in the conservation of listed species and the monitoring of recovered and candidate species.

To enter into a cooperative agreement, a state must have established and maintained an "adequate and active" program for the conservation of listed species in accordance with the purposes of the Act. To be deemed "adequate and active," the Secretary must find that the program satisfies the criteria of section 6(c). Upon making such finding, the Secretary must enter into a cooperative agreement with the state to assist in implementation of the state's program. Thereafter, the Secretary must reconfirm such finding annually if the agreement is to be renewed. The Service first entered into a cooperative agreement with the State of Florida in 1976, which was renewed annually until 2001, when it was superseded by the current agreement between the Service and the Commission. Since then, the Service has renewed the agreement annually without modification in accordance with sections 6(c) and (e) of the Act.

Pursuant to section 6 of the Act, the Secretary has found that Florida's conservation program is "adequate and active" and that under the program:

- (1) the authority resides in the Commission to conserve resident fish or wildlife species that Florida or the Secretary has determined to be endangered or threatened;

- (2) the Commission has established acceptable conservation programs consistent with the purposes and policies of the Act for all resident fish or wildlife species that are deemed by the Secretary to be endangered or threatened and has furnished a copy of such plan and program to the Secretary;
- (3) the Commission is authorized to conduct investigations to determine the status and requirements for survival of resident fish and wildlife species;
- (4) the Commission is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened fish or wildlife species; and
- (5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened or that under the Commission's program, the requirements of 3 - 5 are met and plans are included under which immediate attention will be given to those resident species of fish and wildlife that are determined by the Secretary or the Commission to be endangered or threatened and upon which the Secretary and the Commission agree are most urgently in need of conservation programs.

In addition to satisfying the previously mentioned statutory criteria, Florida maintains one of the most prominent state fish and wildlife conservation programs in the Nation. Multiple state agencies administer over 9.8 million acres of conservation lands, and since 2001 the state has spent over \$2.8 billion in conservation land acquisition. The Commission's management and research activities on state and federally listed species are supported by hundreds of expert scientists and land management staff, and an annual budget of more than \$18 million in state funds. Examples of the Commission's activities include the development of comprehensive management plans such as that for the Florida manatee, and proactive protection measures such as the establishment of numerous manatee protection areas that have facilitated the population growth experienced by that species. The Commission also oversees and carries out the vast majority of sea turtle conservation activities in the state, including the permitting of over 100 nest surveyors and coordination of over 2000 volunteers who patrol the beaches looking for evidence of nesting turtles and disoriented hatchlings. The Commission has a state-wide safe harbor program for red-cockaded woodpeckers and the Commission and other state agencies carry out aggressive habitat management programs such as controlled burning, re-establishment of native plant communities, and control of invasive species to benefit imperiled species.

NEPA and the implementing regulations [40 C.F.R. § 1500 *et seq.*] established by the Council on Environmental Quality (CEQ) require all Federal agencies to take into account and analyze environmental consequences when making decisions. Accordingly, in determining whether to enter into the Agreement, the Service must analyze the environmental impacts that would occur from such action. In the past, when deciding whether to renew the Agreement, the Service used categorical exclusions to fulfill its NEPA obligation (Department of the Interior's Departmental Manual, 516 DM 2, Appendix 1). Typically, this type of action, i.e., 516 DM 2,

Appendix 1, provides that “Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case,” can be categorically excluded. Because of the novel aspects of the Agreement, the Service elected to prepare an environmental assessment per 43 C.F.R. 46.215(e), i.e., extraordinary circumstances exist for individual actions within categorical exclusions which may establish a precedent for future action. We believe if the proposal is successful other states may eventually adopt similar programs or undertake similar conservation strategies in their respective cooperative agreements with the Service. As previously stated, it is the Service’s intent that future NEPA documents associated with the species-specific permitting Guidelines of the Agreement will tier from this document.

## **PURPOSE AND NEED**

The purpose of the action is to facilitate recovery of species listed under the Act by influencing the nature, extent, and location of impact avoidance, minimization, and mitigation measures associated with the incidental take permitting process, and to reduce unnecessary duplication of effort. The rules recently adopted by the Commission in Chapter 68A-27 of the Florida Administrative Code (F.A.C.) provide an opportunity to improve and enhance the ability of the Service and the Commission to conserve species at the landscape level, particularly with respect to development proposals.

Although the Service believes our prior Agreement with the Commission functioned as well as any in the Nation, it had shortcomings that are unique to Florida, in part due to the highly active role that the Commission and other state agencies play in the conservation of federally listed species. This active role has achieved substantial conservation results, described in the Introduction, but it has also lead to duplicative permitting and occasional inconsistencies in the recommendations and management practices between the conservation agencies, land managers, and the development and regulated community. Reducing or eliminating the duplication and inconsistency could result in more predictable outcomes, compressed permitting timeframes, and conservation/mitigation measures that are less haphazard and more effective in conserving listed species.

The survival and recovery of listed species depends on functional ecosystems, which are populated by both listed and non-listed species. The Service’s conservation mission is not limited to listed species, and we need to manage our responsibilities under section 10 of the Act to facilitate and produce conservation benefits as much as practicable for other species at the landscape level. Currently, the Service and other Federal agencies and partners are engaged in establishing Landscape Conservation Cooperatives (LCCs) nationwide. These LCCs will develop a network of landscape plans and designs for the conservation of biodiversity in response to threats such as accelerated climate change, invasive species, development, and disruption of natural ecological processes. In Florida, projects such as the state’s Cooperative Conservation Blueprint and Critical Land and Waters Identification Project will help shape

conservation plans at the landscape level. These landscape plans and designs will necessarily dovetail with and accommodate recovery needs for listed species, and will guide preservation and restoration efforts toward habitats that are of the greatest importance. A primary impetus for this action is the need to establish a more effective linkage between these landscape-scale conservation efforts and the incidental take permitting process for listed species.

## **PUBLIC PARTICIPATION**

The public was extensively involved in the development of the Commission's revised imperiled species rules at 68A-27.007(1), F.A.C. *et seq.*, through 15 stakeholder sessions that occurred from February 2008 through July 2010. There were three public comment periods: July 9-24, 2009; August 14-September 9, 2009; and, October 12-November 6, 2009. There was also opportunity for public comment at Commission meetings in September 2009 and December 2009, and at the Commission meeting when the rules were adopted in September 2010. At the September 2010 meeting, a majority of the public supported the rules.

A draft Environmental Assessment for this Action was published for public review on June 4, 2011. Following a 45 day extension, the comment period closed on August 19, 2011. Public comments and responses are provided below. It is the Service's intent that future NEPA documents associated with the species-specific permitting Guidelines required by the Agreement will tier from this document. The Service also is conducting intra-Service consultation on the Agreement in accordance with section 7 of the Act.

### **Public Comments and Responses**

**Comment:** *The Act does not provide for the Service to delegate Section 10 authority to the States. What is the legal authority the Service is relying upon for delegating incidental take authorization to the Commission?*

**Response:** The Service does not consider the authorization in the agreement to be a delegation of authority. The cooperative agreement is a federal action subject to section 7 of the Act, for which incidental take is addressed in compliance with sections 7(b)(4) and 7(o)(2). The Service retains full authority to enforce sections 4(d) and 9(a)(1)(B) prohibitions related to Commission-issued permits. Service section 10 permits would be required of applicants that either cannot or elect not to obtain Commission permits, and for actions affecting species for which there are no jointly adopted Guidelines. The Service will also continue to consult with federal action agencies under section 7.

**Comment:** *State permits should require a framework that secures better conservation benefits through a balance of stronger avoidance, minimization, and compensatory mitigation measures.*

**Response:** We agree and that is the intent of the Agreement. The language in the draft Agreement, i.e., "...the more stringent of issuance criteria..." was replaced with language that describes more stringent requirements that will ensure improved conservation benefits. The Agreement retains the federal requirements that the permit must only address incidental take; the

permit must provide for adequate funding for conservation measures and procedures to deal with unforeseen circumstances; and the permit must contain other measures and assurances [e.g., duration of commitments, deed restrictions, monitoring, reporting, performance requirements, etc.] as are necessary or appropriate. The federal requirements that the permit must include impact minimization and mitigation to the extent practicable, and that taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild, are replaced with the more stringent criteria that impact avoidance, minimization, and mitigation measures must be consistent with the conservation (i.e., recovery) of the species; the permit must have a scientific or net conservation benefit, and the permitted activity must have no net negative impact on survival and recovery of the species in the wild.

**Comment:** *The Agreement should state the threshold other states would have to meet in order to gain access to an incidental take authorization program similar to Florida's.*

**Response:** The Agreement acknowledges that the Commission has: 1) authority to regulate take of a covered species commensurate with that of the Service; 2) authority to permit incidental take provided there is no net negative impact to the species and public transparency and participation in its programs; and 3) authority to enforce prohibitions on take. As stated previously, the Agreement also contains the specific criteria for the Guidelines. States unable or unwilling to meet or exceed these standards would need to obtain incidental take authority via the section 10 (a)(1)(B) process or a mechanism other than the section 6 Agreement. The principle underlying section 6 is conservation, i.e., recovery, of threatened and endangered species, and any authorizations via the section 6 Agreement must be consistent with this standard.

**Comment:** *The Agreement should contain provisions for monitoring and reporting, enforcement authority for both agencies, authority to suspend the Guidelines or the incidental take authorization (for cause), and reporting and performance requirements.*

**Response:** We agree. Monitoring and reporting requirements are specified in the Guidelines. Enforcement authority for both agencies and the Service's authority to suspend the Agreement are part of the Agreement. The Guidelines are subject to re-initiation of consultation under section 7, and the Agreement is reviewed annually for compliance with section 6.

**Comment:** *The Service, not the State of Florida, has a duty to ensure against jeopardy.*

**Response:** We agree. The Service is ensuring compliance with section 7(a)(2) via consultation on both the agreement and the Guidelines.

**Comment:** *The Commission is not prepared to assume section 10 permitting responsibilities.*

**Response:** The degree of Commission participation is discretionary. There is no requirement for it to assume responsibilities beyond its capabilities. For example, the Commission may elect to address permitting of a federally listed species on a state-wide basis, on a county or regional basis, only in certain habitats, only in those circumstances where it is also issuing a permit for state-listed species, or not at all.

**Comment:** *The proposed conservation agreement and draft EA are entirely silent on the preparation and approval process for habitat conservation plans.*

**Response:** The requirements for State issued incidental take permits will be specified in the Guidelines. The proposed Agreement has been modified to specify the standards for Guidelines and the opportunity for public participation and review.

**Comment:** *The Agreement should provide for notice and comment on the Guidelines and individual permits issued by the Commission. It is unclear whether the public would retain the ability to comment on or challenge the Commission's incidental take permit decisions.*

**Response:** The Agreement provides for public input into and public review of the Guidelines. While the Commission does not specifically notice their permits for review and comment, their permit applications are available for public review on-line. The public also has the ability to challenge Commission-issued permits per Section 68-1.001; Section 68-1.008; and Chapter 28-106, F.A.C.

**Comment:** *The Service must prepare an environmental impact statement (EIS), there is not enough information and impacts are unknown, the proposed project establishes precedent for future actions with significant effects, and there may be cumulative significant impacts to endangered species.*

**Response:** We disagree. Actions such as the proposal are often categorically excluded because meaningful analyses cannot be carried out at this stage of development and the future actions are subject to NEPA compliance. NEPA documents associated with the Guidelines will address cumulative effects and the significance of all foreseeable effects. Should these effects exceed significance criteria for any component of the human environment, we would prepare an EIS. We note, however, that the standards in the Agreement require that all Commission-permitted projects have a scientific or conservation benefit and no net negative impact on the affected species; therefore, the need to prepare an EIS should occur only infrequently if at all.

**Comment:** *The draft EA is inadequate under NEPA; it fails to provide an accurate and well supported statement of purpose and need; it fails to contain a reasonable range of alternatives.*

**Response:** We disagree. The purpose of the Action is to facilitate recovery of species listed under the Act by influencing the nature, extent, and location of impact avoidance, minimization, and mitigation measures associated with the incidental take permitting process. The need is to reduce unnecessary duplication of effort. Alternatives are considered in the NEPA process to avoid and minimize impacts associated with a proposed federal action, and we anticipate few impacts resulting from implementation of the Agreement, but we would consider such impacts in the NEPA process associated with development of the Guidelines. We are unaware of any alternatives that provide comparable benefits to the Agreement and none were suggested in the public comment period.

**Comment:** *The delegation of incidental take permitting to the states represents a fundamental shift in Service policy and is subject to notice and comment rulemaking under the Administrative Procedures Act (APA).*

**Response:** As previously addressed, the Service disagrees with the premise that the action is a delegation of authority and the adoption of the Guidelines actions under the Agreement are subject to public notice and comment. The Agreement is not applicable beyond the State of Florida and few states could qualify for similar agreements under current state laws and regulations. For example, no other states within the jurisdiction of the signatory (i.e., the Service's Southeast Regional Director) could currently enter into such an agreement. Promulgation of a formal policy that is not applicable at the national or even a regional level is not appropriate at this time.

**Comment:** *The draft EA and proposed cooperative agreement do not provide for meaningful public comment.*

**Response:** We disagree. The comment opportunity on the EA and the Proposed Agreement, and the 45 day extension of that opportunity, were noticed throughout the affected area. Individual notices were also sent to stakeholder organizations who participated in the development of the state regulations, including that of the commenter.

**Comment:** *There is no mention of federal delegation to the State of Florida anywhere in the revisions to Rule 68A-27.007.*

**Response:** We disagree. Rule 68A-27.007 states "The Commission permit or other authorization will only be issued to take or *incidentally take* Federally-designated Endangered and threatened Species *if specifically authorized under a written agreement or regulatory delegation* by the U.S. Fish and Wildlife Service...provided that the issuance shall not be inconsistent with federal law [*emphasis added*]." As discussed previously, the change in the Agreement is authorization for the Commission to issue permits under specific circumstances rather than a delegation.

**Comment:** *The draft EA's vague references to the development of future permitting guidelines prevents the public from providing meaningful comments.*

**Response:** The Agreement has been revised to provide greater clarity of the requirements for the Guidelines and to confirm the opportunities for public input and comment.

**Comment:** *It is unclear how the National Marine Fisheries Services' incidental take permitting program will be affected by the proposed agreement.*

**Response:** The Agreement has no effect on other agreements or permitting processes.

## **ALTERNATIVES**

## **Alternative 1: No Action**

The Service considered evaluating discontinuation of the Agreement as the No Action Alternative; however, the Act requires the Service to maintain such agreements with any state that has an “adequate and active” program, which is the case in Florida. Without a proposed amendment to the prior Agreement, the Service would renew it annually as long as the program continues to satisfy the “adequate and active” criterion. Under such circumstances, CEQ guidance is to use continuation of the ongoing management regime as the No Action Alternative in NEPA documents. For purposes of this EA, therefore, the Service defines continuation of the prior Agreement as No Action. Continuation of the prior Agreement would satisfy the requirements of the Act, but it would preclude the anticipated additional conservation and socio-economic benefits described for the Action (Alternative 2).

Under the prior Agreement, the Commission was expressly prohibited from engaging in, or issuing any permit authorizing, the take of listed species without the prior issuance of a Federal permit to an applicant by the Regional Director of the Service (Regional Director). Consequently, if both state and federally listed species were affected by a single project proposal, permits were required from both the Service and the Commission. The prior Agreement provided limited exceptions to this prohibition by authorizing certain Commission employees to take listed species for conservation purposes consistent with the Act; however, it did not expressly or affirmatively authorize the Commission to issue conservation permits to other entities. Although the prior Agreement addressed take of listed species for conservation purposes, it did not mention “incidental take” or authorize Commission employees to engage in or issue permits for incidental take.

## **Alternative 2: Preferred Alternative (Action)**

The Action is for the Service to enter into a new Section 6 Agreement with the Commission (Attachment 1). The genesis of this action was the Commission’s 2010 adoption and revision of imperiled species rules at 68A-27.001, F.A.C., *et seq.* These rules revised species listing procedures and added provisions at 68A-27.007, F.A.C., to eliminate the need for duplicate Commission and Service permits for the intentional and incidental take of listed species.

The Agreement differs from the prior Agreement by expressly and affirmatively authorizing the Commission to issue conservation permits and incidental take permits for listed species, provided certain conditions are met, without prior issuance of a Federal permit by the Regional Director. This distinction represents a marked departure from the prior Agreement.

### **Take for Conservation Purposes**

Under section 2.b of the Agreement, specified employees of the Commission are authorized to take and issue permits for take of endangered species for conservation purposes that are consistent with the Act, the Agreement, or an applicable grant agreement. Section 2.c of the Agreement also grants the same authority to the Commission for take of threatened species for

conservation purposes. The Commission's newly adopted rule at 68A-27.007, F.A.C. codifies these authorizations and allows the Commission to issue permits for scientific and conservation purposes if specifically authorized to do so under a written agreement or regulatory delegation by the Service and where such permit would benefit the survival potential of the species. The rule defines a "scientific or conservation purpose" as one that furthers the conservation or survival of the species, including collection of scientific data needed for conservation or management of the species, and requires the Commission to consider certain factors in determining whether the permit applicant has demonstrated that such purpose would be served.

### Incidental Take

The Agreement authorizes the Commission to issue incidental take permits for listed species under certain circumstances. Incidental take is take that occurs incidental to, and is not the purpose of, an otherwise lawful activity. Section 2.d of the agreement authorizes issuance of such permits where:

1. "the issued permit is consistent with provisions of a Permitting Guideline appended to this Cooperative Agreement pursuant to the provisions of section 6 below;
2. the Permitting Guideline will ensure that: the permit must only address incidental take; the permit must include impact avoidance, minimization, and mitigation measures in a manner consistent with the conservation (i.e., recovery) of the species; the permit must have a scientific or net conservation benefit; the permit must provide for adequate funding for conservation measures and procedures to deal with unforeseen circumstances; the permitted activity must have no net negative impact on survival and recovery of the species in the wild; the permit must contain other measures and assurances [e.g., duration of commitments, deed restrictions, monitoring, reporting, performance requirements, etc.] that the Service and/or Commission may require as being necessary or appropriate; the permit must meet any more restrictive conditions required by any subsequent amendments in Federal or State laws and regulations.
3. the permit provisions are enforceable by both the Service and the Commission;
4. the authorized take is not otherwise prohibited by other federal treaty or statute beyond the Act;
5. the Service has conducted intra-Service consultation pursuant to section 7(a)(2) of the Act on the Permitting Guideline;
6. the permits will not exceed any incidental take thresholds specified in the intra-Service consultation;

7. the Service has completed the analysis required by the National Environmental Policy Act (NEPA) and noticed the availability of the resultant NEPA document for public comment in the Federal Register;
8. the Commission has provided opportunity for public stakeholder participation in development of its input into the Permitting Guidelines;
9. the Commission provides for real time public access to permit applications, associated information, and permit decisions;
10. the Commission notifies the Service upon receipt of an application and issuance of a permit or provides access to a system that allows for the Service to monitor receipt of an application and issuance of a permit; and
11. the Commission provides for administrative challenge procedures of its final permit decisions per Section 68-1.001; Section 68-1.008; and Chapter 28-106, F.A.C.”

The Agreement assures that state-issued permits meet a standard that is as or is more protective of the species than that required by the Act, i.e., that the impacts of the taking must be minimized and mitigated to the maximum extent practicable and that the taking will not appreciably reduce the likelihood of the survival and recovery of the species. The permitting Guideline for a species also will incorporate the known Best Management Practices for a species and require or allow a permittee to implement such measures, where applicable, to avoid and minimize impacts to the species.

The Commission codified its authority to issue such permits in Rule 68A-27.007, F.A.C. Under the rule, the Commission can issue such permits where it is specifically authorized to do so under a written agreement or regulatory delegation by the Service and where the permitted activity clearly enhances the survival potential of the species, or where there is a scientific or conservation benefit, and only upon a showing by the applicant that the permitted activity would not have a negative impact on the survival potential of the species. The rule also requires the Commission to consider seven factors in determining whether to issue a permit (see Rule 68A-27.003, F.A.C.).

Although the Agreement and the Commission’s rule at 68A-27.007, F.A.C., authorizes the Commission’s issuance of conservation and incidental take permits, entities seeking such permits will not be required to obtain permits through the Commission. Rather, they will have the option to utilize the Service’s section 7 consultation and section 10 incidental take permitting processes, as applicable, to obtain such permits. For many, however, the action will provide a more streamlined and predictable permitting process. It is expected to allow businesses and lenders to plan ahead and incorporate permitting requirements and expenses into their business models, thereby reducing uncertainty and risk. Based on the results of prior programmatic permitting approaches, the Service believes that many prospective permit applicants will choose to use the state permitting process of the Agreement.

The Action could potentially apply to all federally listed threatened and endangered species listed at 68A-27.007(1), F.A.C., with the exception of species for which no incidental take is currently authorized by the Federal government (e.g., the Florida manatee, which requires specific take authorization under the Marine Mammal Protection Act of 1972). The Service and the Commission will determine the actual species and species groups for which Guidelines will be developed. Such determinations will be based on the agencies' respective workloads, the value to species conservation, and the benefits to the regulated public. Guidelines for listed species will include approved Best Management Practices as well as a suite or menu of permitting requirements consistent with the requirements listed above. Guidelines will be developed within the context of recovery plans or similar landscape level conservation plans designed to provide for the survival and long term viability and recovery of the species.

The Agreement will not eliminate the need for the Service to address proposed activities that are neither permitted by the Commission, covered by the Agreement, or not in compliance with applicable species-specific Guidelines. The Service also will engage in section 7 interagency consultations with other Federal agencies and process applications for incidental take permits under section 10 of the Act.

### **Other Alternatives Considered**

The prior Agreement is representative of other section 6 agreements throughout the Service. The new Agreement, however, is unique in its approach to cooperation and the first of its kind. Alternative amendments to the prior Agreement would require parallel components in the Commission's authorities under the F.A.C. Given the Commission's rule as currently written, the Service is not aware of other programmatic alternatives to consider that would provide the conservation benefits associated with take permitting under the Agreement. However, the Guidelines required under the Agreement will present opportunities unique to each species or suite of species covered to link incidental take permits to landscape-scale conservation initiatives, and the Service will prepare NEPA documents for the Guidelines as they are developed.

### **AFFECTED ENVIRONMENT**

The affected environment is specific to each species or suite of species covered by the Guidelines, and the Service will describe it in detail in the NEPA document prepared for each set of Guidelines. For purposes of this EA, Florida's State Wildlife Action Plan, published in 2006 by the Commission, contains the most recent comprehensive compilation of information relative to fish and wildlife conservation in Florida, and it provides a context for the action. The Plan is incorporated herein by reference and can be found at [http://myfwc.com/WILDLIFEHABITATS/Legacy\\_StrategyDownload.htm](http://myfwc.com/WILDLIFEHABITATS/Legacy_StrategyDownload.htm). The following is an excerpt from the Plan and is used with the permission of the Commission.

*In the last 50 years Florida's population has grown from less than three million people to more than 17 million. Florida ranked fourth in U.S. population (U.S. Census Bureau 2000), but Florida's population density is approximately double that of the most populous state, California. Florida's most densely populated urban areas include Miami, Orlando, Tampa, and Jacksonville. The 2030 population projection for Florida is an 80 percent increase to 28.7 million people (U.S. Census Bureau 2000). Based on this forecast, Florida would rank third in population at that time.*

*Florida's economy is increasingly recognized as tied to its natural and human-created amenities. Florida's current economic growth is not primarily due to the traditional bases of growth such as agriculture, resource extraction, and manufacturing (Kiker and Hodges 2002). However, despite declines over the past century, agriculture and forestry are still major uses of the landscape and continue to contribute to Florida's economy.*

*Tourism is the largest industry in Florida and contributes \$53 billion a year to the state's economy. Seventy-one million visitors are drawn to Florida each year from across the United States and many foreign countries. Visitors come to see the many entertainment attractions in Florida and to enjoy Florida's moderate climate and abundant natural resources, including clear waters, world-class beaches, coral reefs, parks, rivers, and lakes.*

*Wildlife-related recreation in Florida, including fishing, hunting, and wildlife watching activities, accounts for \$7.2 billion spent on trips and equipment. In 2001, over three million persons engaged in fishing and wildlife watching activities in Florida and over 200,000 of the three million participated in hunting. For comparison, total wildlife-based recreation expenditures in the U.S. were in excess of \$96 billion (U.S. Fish and Wildlife Service; U.S. Census Bureau 2002).*

*Florida's economy and its communities also strongly benefit from money and jobs created by industries based on natural resources, which include a \$17 billion forestry industry, a \$6.6 billion fishing industry, and a \$14.6 billion boating industry. Florida seaports form another important part of the state's economy; the seaports support a \$35 billion cargo and trade industry, with 288,000 jobs, and a \$20 billion cruise ship industry, which embarks almost half of the nation's cruise passengers each year.*

*Florida is an ecologically diverse region ranging in climate from the temperate to the subtropical. It is relatively flat with a maximum elevation in the north of approximately 330 feet (100 meters), and much of the state below elevations of 100 feet (30 meters).*

*Northern Florida is within the southern temperate zone and consists of broad alluvial riparian habitats, and upland flats and ridges once dominated by longleaf pine communities. The central peninsula consists of broad flatlands once dominated by longleaf and slash pine, dry and wet prairies and sandy ridges with scrub and sandhill communities harboring numerous rare and endemic species (Myers 1990). The southern tip of the peninsula, though heavily modified by development, still contains tropically-influenced hammocks, swamps, rocklands, and marshes of the Big Cypress Swamp, Everglades, and the Florida Keys.*

*Rivers originating in the southern Appalachians and Piedmont are an important ecological component in north Florida that harbor increasingly rare mollusk and fish species. Lakes are very common in the Florida peninsula, and Lake Okeechobee in south Florida is one of the largest lakes in North America. Numerous springs are also characteristic of the vast limestone regions of north and central Florida. Springs, limestone caves, and sinks support many rare aquatic invertebrates (Deyrup and Franz 1994). Estuarine ecosystems include productive salt marsh communities in the northern half of the state, mangrove communities in the southern half of the peninsula and seagrass communities statewide.*

*The Gulf of Mexico and Atlantic Ocean significantly influence a climate that is generally warm and humid. Summer thunderstorms are frequent, and lightning-caused fires are an extremely important ecological process that has shaped many upland and wetland communities for millennia (Myers and Ewel 1990). Rains vary from highly seasonal patterns in south Florida with heavy rains occurring mainly in the summer to more even year-round rainfall in northern Florida. North Florida's rainfall is more frequent in winter due to the influence from continental frontal systems (Chen and Gerber 1990).*

*Freezes occur every year in north Florida but are extremely rare in south Florida. Freeze events have a strong influence on the range of tropical species up the Florida peninsula. Tropical species range farther north along the coasts, which are better buffered from freeze events than interior areas because of the warm waters of the Atlantic and Gulf of Mexico (Harris and Cropper 1992).*

*Florida's wildlife is a mixture of southern temperate, neotropical, and southwestern species. Sea level rise and fall have been a dominating biogeographic force. For example, the Florida scrubjay, Florida mouse, eastern diamondback rattlesnake, and gopher tortoise are all closely related to species found in western North America, as a result of semiarid habitat that stretched into Florida during the much lower sea levels of the early Pleistocene periods (Webb 1990). Tropical species have colonized Florida by flying across the Gulf of Mexico or by riding Gulf Stream currents and include numerous plants, wading bird species, and raptors such as the snail kite and short-tailed hawk (Rodgers et al. 1996). In fact, Florida is a premier birding destination due to the various tropical species that can only be seen or are best seen here (Kale and Maehr 1990). Temperate species include the red-cockaded woodpecker, and various amphibians, fish, and mollusk species (Gilbert 1992; Moler 1992; Deyrup and Franz 1994; Rodgers et al. 1996).*

*Florida has 755 known native terrestrial vertebrates including frogs, snakes, lizards, mice, and birds (Florida Fish and Wildlife Conservation Commission 1999; Florida Fish and Wildlife Conservation Commission 2002a; Moler 1999; Deyrup and Franz, 1994). In addition, at least one thousand marine fish species inhabit Florida's nearshore waters, which encompass about one fourth of all the fish species known in the western hemisphere north of the equator. Florida has approximately 30,000 species of terrestrial invertebrates and thousands more in aquatic and marine system (Whitney et al. 2004). Several species of marine vertebrates including whales, dolphins, sea turtles, and the Florida manatee inhabit Florida's waters.*

*Eleven vertebrate species and/or subspecies are believed to have been extirpated or driven to extinction since the arrival of Europeans in Florida, including the red wolf, Caribbean monk seal, bison, Goff's pocket gopher, Chadwick beach cotton mouse, pallid beach mouse, ivory-billed woodpecker, Carolina parakeet, passenger pigeon, dusky seaside sparrow, and Bachman's warbler.*

## **ENVIRONMENTAL CONSEQUENCES**

As stated previously, the effects of the Action are “too broad, speculative, or conjectural to lend themselves to meaningful analysis” given that, at this juncture, the Service and the Commission have not yet determined the listed species whose take would be authorized through the Agreement. The environmental effects of the Action could occur in any habitat that is occupied or potentially occupied by a listed species, which would include most, if not all, of the terrestrial and aquatic habitats in the state. Notwithstanding the foregoing, we have described the general scope and effect of the changes below.

The Action is expected to neither increase nor decrease the number of permitted activities. Its purpose, and expected impact, is to influence the nature, extent, and location of impact avoidance, minimization, and mitigation measures in a manner that is more consistent with the recovery of the listed species. In some instances, this may result in an increase in costs of development, but it may decrease costs in others. On balance, the Service expects a slight increase in mitigation costs for those electing to use this process, but those costs may be offset by reduced and more predictable permitting timeframes that allow for faster and more predictable returns on the investments of the applicants. Because of the anticipated improvement in conservation benefits and the predictability of permitting procedures, conservation and development interests did not object to the changes in the state's administrative rules at 68A-27, F.A.C. This leads the Service to believe that impacts of the Action will be essentially cost neutral and improve the overall quality of the environment, particularly from a natural resource conservation perspective.

To gauge the potential number of actions that will be affected by the Action in the near term, the Service reviewed the section 10(a)(1)(B) incidental take permits issued in Florida from 2006 through 2010. This period encompassed the height of the economic boom in Florida as well as the recent downturn. Given current economic conditions in Florida, the Service believes that the number of permits that will be issued in the next 5 years will not exceed the number issued from 2006 to 2010, and that the number represents a conservative assessment of the effects on the environment. It is also possible that the species that were impacted by some of the previously issued permits will not be affected by the Action but that other species will be impacted. The listed species for which Guidelines will be adopted have yet to be determined. Nonetheless, the Service believes that it has presented a reasonable assessment of the scope of the Action.

From 2006 through 2010, the Service issued a total of 107 incidental take permits (of these 78 were issued in 2006 and 2007, further validating the change in economic conditions referenced previously). The affected species along with the number of permits and acreages impacted (some acreages overlap where multiple species occur in the same location) are as follows:

- Florida Scrub-jay (87 permits; 1418.92 acres);
- Choctawhatchee Beach Mouse (1 permit; 2.65 acres);
- Perdido Key Beach Mouse (9 permits; 2.68 acres);
- Eastern Indigo Snake (2 permits; 13,374 acres);
- Bluetail Mole Skink (1 permit; 1.9 acres);
- Sand Skink (5 permits; 40.18 acres);
- Key Deer (1 permit; 168 acres); and
- Lower Keys Marsh Rabbit (1 permit; 40 acres).

As stated above, the objective of the Action is to influence the nature, extent, and location of impact avoidance, minimization, and mitigation measures in a manner more consistent with the recovery of the species. These measures often include:

- habitat protection through easement or acquisition;
- planting of desirable vegetation;
- removal of undesirable vegetation;
- control of vegetative succession;
- translocation of affected individuals of species;
- removal of invasive species; and/or
- restoring or mimicking natural ecological processes such as burning or flooding.

Permits issued under the Agreement are likely to provide for greater acreages protected, improved, and located in areas that are more compatible with species' recovery as well as more landscape-level initiatives that will make greater contributions to biodiversity conservation than permits under section 10(a)(1)(B) of the Act. To obtain an incidental take permit under the Agreement, habitat of equal or greater value would likely be secured and located within a management area expected to be maintained as part of the recovery strategy for the species or within a viable subpopulation of the species. While this type of mitigation would not necessarily increase the net expense to the permit holder, it would improve the conservation value of the mitigation. Permits issued under section 10(a)(1)(B) can and sometimes do achieve these same permitting criteria under the Agreement. However, there is no legal requirement to do so under section 10 of the Act. Under the Agreement, we believe that the more efficient and predictable permit process, and the prospect of obtaining a permit for both state and federally listed species through "one stop shopping," will result in more permits that meet this elevated permitting standard and provide improved conservation results.

The anticipated effects of the Action relative to No Action are summarized in the table below:

<b>Permitting Process Feature</b>	<b>Effect of Action Relative to No Action</b>
Best Management Practices	More established for more species
Mitigation Effectiveness	Increased
State/Federal Consistency	Improved
Permit Predictability	Improved
Permit Time	Decreased
Cost	Neutral

Finally, should the Agreement or Guidelines not achieve the intended result, the Act requires re-initiation of the section 7 consultation, and the Service would either suspend or terminate the Guidelines or the Agreement.

### **COMPLIANCE WITH LAWS, REGULATIONS, AND POLICIES**

This EA was prepared in accordance with NEPA, and is consistent with the Department of Interior’s NEPA policies in the Departmental Manual (516 DM8 “Managing the NEPA Process – U.S. Fish and Wildlife Service) and our NEPA regulations at 43 CFR part 46. Because the Action is an administrative/procedural agreement between the Service and the Commission, most of the additional laws, regulations, and policies that frequently apply to on-the-ground conservation actions do not apply in this instance, with the exception of the Endangered Species Act. As previously stated, compliance with the Act will be documented in the intra-Service biological opinion prepared for this action.

The Service has reviewed the Action and determined that the following laws, accompanying regulations, and Executive Orders are not applicable:

- American Indian Religious Freedom Act
- Archaeological Resource Protection Act
- Clean Air Act
- Clean Water Act
- Coastal Zone Management Act
- Comprehensive Environmental Response, Compensation, and Liability Act
- Fish and Wildlife Coordination Act
- Marine Mammal Protection Act
- Migratory Bird Treaty Act
- National Historic Preservation Act
- Native American Grave Protection and Repatriation Act
- Pollution Prevention Act
- Resource Conservation and Recovery Act
- Executive Orders:

- 12898 Environmental Justice
- 11988 Floodplain Management
- 11990 Protection of Wetlands
- 13186 Migratory Birds

Adoption of the permitting Guidelines required under the Agreement may require, depending on the circumstances unique to each, compliance with one or more of the statutes and policies listed above. The Service intends to use the NEPA documents prepared for the Guidelines as the means to verify compliance with those applicable in each instance.

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