



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard

Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/ES

MAY 11 2012

Mr. Nick Wiley
Executive Director
Florida Fish and Wildlife Conservation Commission
Farris Bryant Building, 620 South Meridian Street
Tallahassee, Florida 32399-1600

Dear Mr. Wiley:

Pursuant to the request from the Florida Fish and Wildlife Conservation Commission (Commission), and as we have discussed and coordinated, enclosed is the amended Cooperative Agreement (Agreement) between our respective agencies pursuant to section 6(c) of the Endangered Species Act of 1973, as amended (Act) and chapter 68A-27, Florida Administrative Code. The Agreement provides new opportunities to develop and implement a shared vision for fish and wildlife conservation, and to increase the efficiency and effectiveness of our conservation programs for the benefit of imperiled fish and wildlife, as well as the people we serve.

Unlike the existing section 6 agreement, the amended Agreement authorizes the Commission to issue conservation and incidental take permits for listed species thus eliminating the need for duplicate Commission and the U.S. Fish and Wildlife Service (Service) permits. Under section 2.b of the Agreement, authorized employees or agents of the Commission may, when acting in the course of official duties, take or issue a conservation permit authorizing the take of resident federally listed endangered species for purposes that are consistent with the Act, chapter 68A-27, Florida administrative code, this Agreement, and the provisions of any section 6 grant agreement, 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 forty-five (45) consecutive days. Section 2.c of the Agreement grants the same authority to the Commission regarding take of threatened species for conservation purposes. These authorizations are codified in the Commission's newly adopted rule at 68A-27.007, Florida administrative code, which allow 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 a permit applicant has demonstrated that such purpose would be served.

The Agreement also authorizes the employees of the Commission, when acting in the course of official duties, to issue permits authorizing the take of resident federally listed species incidental to and not the purpose of an otherwise lawful activity provided:

- The issued permit is consistent with provisions of a species specific permitting Guideline incorporated into the Cooperative Agreement pursuant to the provisions of section 6 of the Agreement;
- the species specific permitting Guideline will ensure that: the permit must only address incidental take; 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;
- the permit provisions are enforceable by both the Service and the Commission;
- the authorized take is not otherwise prohibited by other federal treaty or statute beyond the Act;
- the Service has conducted intra-agency consultation pursuant to section 7(a)(2) of the Act on the permitting guideline;
- the permits will not exceed any incidental take thresholds specified in the intra-Service consultation;
- 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;
- the Commission has provided opportunity for public stakeholder participation in development of its input into the guidelines;
- the Commission provides for real-time public access to permit applications, associated information, and permit decisions;
- 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
- the Commission provides for administrative challenge procedures of its final permit decision per section 68-1.001; section 68-1.008; and chapter 28-106, Florida administrative code.

The Commission has committed to exercise the authority it has to ensure that conservation commitments of permittees run with the land. The Agreement, at section 2.d.2, incorporates the following language-- the permit must contain other measures and assurances (e.g., duration of commitments, deed restrictions, conservation easements, and monitoring, reporting, performance

requirements, etc.) that the Service and/or Commission may require as being necessary or appropriate. The species specific guidelines will contain the specific requirements for duration, deed restrictions, etc. based on species needs and the necessary assurances to achieve the desired benefit.

The Commission has also committed to providing opportunity for public comment and access to the administrative record comparable to the federal permit process. Sections 2.d. 9 and 2.d.11 of the Agreement contain provisions for public access and administrative challenges to the Commission's permit decisions. The NEPA documents for the species specific guidelines will be noticed in the Federal Register for public comment. Additionally, section 2.d.9 states that the Commission will provide for real-time public access to permit applications, associated information, and permit decisions while section 2.d.11 the Agreement provides the process for administrative challenges to the Commission's final permit decisions pursuant to sections 68-1.001 and 68-1.008 and chapter 28-106, Florida administrative code. While the Commission does not specifically notice their permits for review and comment, permits applications would be available for public review online.

The Agreement, will be reviewed by the Service to assess the State's conservation program for federally listed species. This review will occur on at least an annual basis pursuant to section 6 of the Act. The Agreement further contains provisions authorizing the Service to suspend the Commission's permitting authority and to assess whether Commission issued permits are achieving the desired goals and objectives for the conservation of the species.

Notices pursuant to this Agreement shall be made in writing and, unless otherwise provided herein, delivered in person, by mail, by telecopy (facsimile) or by electronic mail (e-mail) to the other party. Notice shall be effective on the date received by the other party. Any change to the contact information listed in the enclosed Agreement shall be communicated in writing to the other party within ten (10) calendar days of such change.

We would like to not only thank you for your leadership in forging this Agreement but for your flexibility, assistance, and support. We understand that our respective staffs are already laying the groundwork for implementation of the Agreement and look forward to its success.

If you have any questions, please contact me at (404) 679-4000 or Leopoldo Miranda, Assistant Regional Director, Ecological Services, Southeast Region, at (404) 679-7085.

Sincerely yours,



Cynthia K. Dohner
Regional Director

Enclosure