

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 (“Agreement”) is entered into between the United States Fish and Wildlife Service (“Service”), an agency of the Department of the Interior, and the Florida Fish and Wildlife Conservation Commission (“Commission”) (hereinafter collectively referred to as the “Parties” and individually as the “Party”) 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”), Article IV, Section 9 of the Florida Constitution, and Chapter 68A-27 of the Florida Administrative Code (F.A.C.) Annotated.

WHEREAS, the Parties acknowledge that the Commission possesses authority and jurisdiction over resident Federally-listed endangered and threatened fish and wildlife (“Federally-listed species”) in upland, freshwater and marine environments; and

WHEREAS, the Service and the State of Florida first entered into a section 6 cooperative agreement 1976, which was renewed annually until 2001, when it was superseded by the agreement dated July 18, 2001, and renewed annually thereafter through 2011; and

WHEREAS, the Parties desire that this Agreement amend and supersede the agreement of July 18, 2001; and

WHEREAS, the Congress of the United States has found that there are Federally-listed species that are in danger of extinction and that these species are 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 ecosystems upon which Federally-listed species 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 that meet national and international standards is key to fulfilling the Nation's international commitments and to better safeguarding the Nation's heritage in its fish and wildlife resources for the benefit of all citizens; and

WHEREAS, the Secretary of the Interior has delegated his responsibilities under section 6 of the Act to the Director of the Service ("Director"), who, in turn, has delegated such responsibilities to the respective Regional Directors of the Service; and

WHEREAS, the Southeast Regional Director ("Regional Director") desires to enter into this Agreement for the purpose of assisting in the implementation of the State of Florida's conservation program for Federally-listed species pursuant to the Act; and

WHEREAS, the Commission has the responsibility to conserve Federally-listed species; and

WHEREAS, the State of Florida, through the Commission, wishes to administer its program for the conservation of Federally-listed species 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 Federally-listed species and acknowledge their mutual desire to work in harmony for the common purposes of planning, developing and conducting programs to protect, manage and enhance the populations of all such species within the State of Florida; and

WHEREAS, the Regional Director is authorized to establish programs for the conservation of Federally-listed species; to provide periodic review of the approved State programs at no greater than annual intervals; to provide funding to such programs in accordance with the terms of the Act provided such funds are available; to provide coordination among the programs of the various States and Territories; and to exchange with the Commission such biological data or other information that may result in the enhancement of opportunities for the continued survival of Federally-listed species; and

WHEREAS, the Regional Director has found that the Commission (a) has the authority to conserve resident fish and wildlife determined by the Commission or the Secretary of the Interior to be endangered or threatened; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish and wildlife species in the State of Florida that are deemed by the Secretary to be Federally-listed species and has furnished a copy of such plan and program to the Regional Director together with all pertinent details, information, and requested data; (c)

has the authority to conduct investigations to determine the status and requirements for survival of resident 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 Federally-listed species; and (e) has provided for public participation in designating resident species of fish and wildlife as endangered or threatened; and

Whereas the Commission has authority to regulate take of Federally-listed species over which the Commission has Constitutional authority, that regulatory authority is commensurate with that of the Service, the Commission has authority to permit incidental take of those species provided there is no net negative impact to the species, the Commission provides public transparency and participation in its programs, and the Commission has authority to enforce prohibitions on take.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Cooperation

- a. The Commission will carry out the activities identified in its conservation program for the benefit of Federally-listed species in the State of Florida.
- b. The Parties agree to cooperate in the development of programs, plans, and projects for the conservation of resident species of fish and wildlife that are listed as endangered or threatened by the State and/or the Service, as well as for 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 due to accelerated climate change; coordination, development and implementation of species management plans and recovery plans to promote consistency and effectiveness in conservation efforts with stakeholders; and coordination, development and implementation of Permitting Guidelines pursuant to subsection 2.d.a, below.
- c. The Regional Director may provide financial assistance to the Commission to assist in the development and implementation of projects for the conservation of Federally-listed species in accordance with 50 C.F.R. Part 81. Such financial assistance will be contingent upon the availability of funds and the Commission's compliance with the requirements of 50 C.F.R. Part 81.
- d. Federal funding to the Commission pursuant to section 6(d) of the Act and the Service's implementing regulations at 50 C.F.R. Part 81 shall be contingent upon a determination by the Regional Director that the Commission's conservation program for Federally-listed

species is “adequate and active” pursuant to section 6 of the Act and the implementing regulations at 50 C.F.R. Part 81.

- e. The law enforcement authorities of the Service and the Commission will assist in the implementation and enforcement of this Agreement and will cooperate in the detection, apprehension and prosecution of violators of the Act, of permits issued in accordance with this Agreement, or of any State law intended to conserve Federally-listed species.
- f. If the Regional Director determines that the Commission’s conservation program is inadequate or inactive, this Agreement and all associated funding may be terminated in accordance with section 7, below, section 6 of the Act and the associated implementing regulations at 50 C.F .R. Part 81.
- g. If the Regional Director determines that the Commission’s issuance of permits pursuant to this Agreement does not satisfy the criteria set forth in subsections 2.b., 2.c., and 2.d., below, or that the Commission has failed to exercise its authority to issue any such permit in the manner provided herein, or that the permitting processes fail to achieve the results anticipated by the Service, the Service may suspend and/or revoke such permitting authority. Any suspension and/or revocation will be in accordance with one or more of subsections 2.b., 2.c., and 2.d. below.

Section 2. Take of Endangered and Threatened Wildlife

- a. General Rule
 - 1. Except as provided in subsections 2.b., 2.c., 2.d., and below, pursuant to a 50 CFR §§ 17.40-48 special rule, Commission agrees to not engage in, or issue a permit authorizing take of a Federally-listed species without prior issuance of a Service permit to the Commission or to a permit applicant authorizing such take.
 - 2. With respect to the importation or exportation of, or interstate or foreign commerce in, Federally-listed species, Commission not to authorize that which is prohibited by the Act or by any regulation issued thereunder.
 - 3. Any person holding a permit issued in accordance with this section of the Agreement shall:

- a. Assume all liability and responsibility for the conduct of any activity conducted under the authority of such permit;
- b. Allow the Service to enter onto the premises where permitted activities occur at any reasonable hour to inspect and monitor for permit compliance; and
- c. Comply with all conditions of the permit and applicable laws and regulations.

4. Subsections 2.b., 2.c., and 2.d. of this Agreement are intended to authorize the Commission to issue permits in accordance with the provisions herein and as contemplated by 68A-27.007(1), F.A.C.

b. Conservation Permits for Federally-listed Endangered Species

Any authorized employee or agent of the Commission may, when acting in the course of official duties, take or issue a conservation permit authorizing the take of a resident Federally-listed endangered species for purposes that are consistent with the Act, Chapter 68A-27, F.A.C., this Agreement and the provisions of any section 6 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 of 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.

The authority conveyed to the Commission by this subsection may be suspended by the Service. The suspension may be limited to one or more particular species or the suspension may apply to all authority under this subsection. The Service may suspend the Commission's authority under this subsection upon a determination by the Regional Director that there exists substantial evidence that such authority has been used inconsistent with this subsection and written notice of this determination to the Commission. Within thirty (30) days of receipt of the notice, the Commission may submit a written request for review of the suspension along with information demonstrating compliance to

the Director. The Director shall promptly consider the Commission's submission and may (1) affirm the Regional Director's determination and revoke the authority that was suspended or (2) reverse the Regional Director's determination and reinstate the authority that was suspended.

c. Conservation Permits for Federally-listed Threatened Species

Any authorized employee or agent of the Commission may, when acting in the course of official duties, take or issue a conservation permit authorizing take of a Federally-listed threatened species for purposes that are consistent with the purposes of the Act, Chapter 68A-27, F.A.C., this Agreement and the provisions of any section 6 Grant Agreement attached hereto.

The authority conveyed to the Commission by this subsection may be suspended by the Service. The suspension may be limited to one or more particular species or the suspension may apply to all authority under this subsection. The Service may suspend the Commission's authority under this subsection upon a determination by the Regional Director that there exists substantial evidence that such authority has been used inconsistent with this subsection and written notice of this determination to the Commission. Within thirty (30) days of receipt of the notice, the Commission may submit a written request for review of the suspension along with information demonstrating compliance to the Director. The Director shall promptly consider the Commission's submission and may (1) affirm the Regional Director's determination and revoke the authority that was suspended or (2) reverse the Regional Director's determination and reinstate the authority that was suspended.

d. Incidental Take Permits for Federally-listed species

Any authorized employee of the Commission, when acting in the course of official duties, may issue a permit authorizing take of a Federally-listed species incidental to and not the purpose of an otherwise lawful activity provided:

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 authority conveyed to the Commission by this subsection may be suspended by the Service. The suspension may be limited to a particular Permitting Guideline or the suspension may apply to all authority under this subsection. The Service may suspend the Commission's authority under this subsection upon a determination by the Regional Director that there exists substantial evidence that such authority has been used inconsistent with this subsection and written notice of this determination to the Commission. Within thirty (30) days of receipt of the notice, the Commission may submit a written request for review of the suspension along with information demonstrating compliance to the Director. The Director shall promptly consider the Commission's submission and may (1) affirm the Regional Director's determination and revoke the authority that was suspended or (2) reverse the Regional Director's determination and reinstate the authority that was suspended.

e. Emergency Provisions

Any authorized employee or agent of the Commission may, when acting in the course of official duties, take Federally-listed species 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 a specimen that constitutes a demonstrable but non-immediate threat to human safety provided that the taking is done in a humane manner and that take by killing or injuring occurs only if it is not reasonably possible to eliminate such threat by live capture and release of the specimen unharmed in a remote area.

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

Section 3. Records

The Commission shall maintain records of its federally-funded projects for the conservation of Federally-listed species in accordance with 50 C.F.R. Part 81, including, but not limited to, the Service's Federal Aid Manual. The Commission also shall maintain records of the numbers of specimens of each species taken by the Commission's employees or agents pursuant to subsections 2.b., 2.c., and 2.e. of this Agreement. Those records shall also document the conservation purposes for which each species was taken as well as of any mortalities or permanently disabling injuries resulting from such take. The Commission shall maintain records of the extent of take authorized pursuant to subsection 2.d.

Section 4. Notification

The Commission agrees to inform the Service in writing of any changes in circumstances that could cause its conservation program(s) to be out of conformance with the requirements of section 6(c) of the Act, the applicable implementing regulations and this Agreement, including, without limitation, any changes in the Commission's relevant constitutional, statutory or regulatory authority. The Commission shall promptly furnish to the Service a written 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 applicable implementing regulations and this Agreement. The Regional Director 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.

Section 5. Effective Date and Renewal

- a. This Agreement shall become effective when signed by the Regional Director and the Executive Director of the Commission, and may be renewed in the following manner. Not later than August 30th of each year, the Commission shall submit a written program submission to the Service containing the following information: (1) any species added to or deleted from the list of resident Federal and State-listed endangered or threatened fish or wildlife; (2) a memorandum of law analyzing (a) any changes in the Commission's statutory and regulatory authority for any Federally and/or State-listed endangered and threatened species since the date of the previous program submission and (b) the application of State law to any resident fish or wildlife species that has been Federally-listed as well as any species that has been proposed for such listing 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 that have been Federally-listed or proposed for listing since the date of the previous program submission; (4) a detailed description of the number of specimens of each species taken pursuant to subsections 2.b, 2.c., and 2.e. of this Agreement,

including the conservation purposes for which the species was taken and any mortalities or permanent disabling injuries resulting from such taking; (5) the species and the extent of take of each species for which incidental take was authorized pursuant to subsection 2.d of this Agreement as well as the number of permits issued for each species; and (6) copies of reports the Commission has prepared since the previous program submission that sets forth the accomplishments of the Commission's conservation program(s) for Federally-listed species. Notwithstanding the foregoing, the Commission agrees that it will provide the above-referenced information to the Service upon request.

- b. The Service will, on or before October 1st of each year, notify the Commission in writing that the Agreement will be renewed effective October of that year or that the Commission's endangered or threatened fish or wildlife conservation program and/or authorities are not in compliance with the criteria of section 6(c) of the Act and the associated implementing regulations at 50 C.F.R. Part 81 or that the Commission is not properly implementing the permitting processes of subsections 2.b., 2.c., and/or 2.d., above. If the Service finds that the program or authorities are non-compliant, this Agreement shall be terminated unless the appropriate changes are made by the date specified by the Service.

For purposes of this section, the phrase "previous program submission" means the most recent renewal application for the Agreement.

Section 6. Amendment

This Agreement may be amended any purpose at any time upon the written concurrence of the Parties. Such amendments will be effective when signed by the Regional Director and the Executive Director of the Commission.

Section 7. Termination

This Agreement may be terminated: (a) by mutual agreement; (b) by the Commission upon sixty (60) days written notice to the Service; or (c) notwithstanding the renewal provisions in section 5(b), above, upon sixty (60) days written notice from the Regional Director to the Executive Director of the Commission terminating the Agreement on the grounds that the State's endangered or threatened fish or wildlife conservation program(s) is no longer in compliance with the criteria of section 6(c) of the Act and the associated implementing regulations and/or that the State has violated a provision of this Agreement. The Commission may submit a written request for review of the Regional Director's determination to the Director within thirty (30) days of receipt of the notice. The Director will consider the Commission's submission and either affirm the conclusion of the Regional Director and terminate this 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 that have been obligated to, but not expended by, the Commission as of the date of the Regional Director's notice of termination shall be retained by the Service 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.

Section 8. Notices

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 following contact information shall be communicated in writing to the other Party within ten (10) calendar days of such change.

If to the Commission:
Florida Fish and Wildlife Conservation Commission
ATTN: Brad Gruver, Listed Species Coordinator
620 South Meridian Street
Tallahassee, Florida 32399-1600

brad.gruver@myfwc.com

facsimile (850) 921-7793

If to the Service:
U.S. Fish and Wildlife Service
ATTN: Leopoldo Miranda, Assistant Regional Director, Ecological Services
1875 Century Blvd.
Atlanta, Georgia 30345

Leopold_Miranda@fws.gov

facsimile (404) 679-7081

Section 9. Defined Terms

With the exception of the following terms, terms used this Cooperative Agreement are intended to have meanings consistent with the Act and the Service's implementing regulation at 50 C.F.R. § 81.1 and should be given the meaning ascribed in the Act or the implementing regulations if defined therein.

- a. "Permitting Guideline" is a document containing permitting requirements and Best Management Practices satisfying the criteria under subsection 2.d. (above) for a species or group of species within all or a portion of its range under the jurisdiction of the Commission.
- b. "Person" means any individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of any State, municipality, or political subdivision of a State; or any State, municipality, or political subdivision of a State.

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

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

BY:

Cynthia K. Dohner

BY:

Nick Wiley

TITLE: Regional Director

TITLE: Executive Director

DATE:

May 14, 2012

DATE:

May 14, 2012