

# **2012 FWS/FWC ESA SECTION 6 COOPERATIVE AGREEMENT**

## **Implications for Conservation of Federally-listed Species and the Regulated Community**

**Presented by Dave Hankla  
Field Supervisor, North Florida  
Ecological Services Office  
U. S. Fish and Wildlife Service  
July 19, 2012**

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# Endangered Species Act (ESA)

## ESA Section 2

*...encouraging the States...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 better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.*

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## ESA Section 3

*"conservation"...to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary [i.e., recovery]*

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## ESA Section 6

Defines the working relationship between the Fish and Wildlife Service and the States in the **conservation** of threatened and endangered species [*the Secretary shall cooperate to the maximum extent practicable with the States...*].

Recognizes that State laws regarding take of T&E species may be more restrictive but not less restrictive than the ESA.

A Sec 6 agreement is required to transfer funds to the states.

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## FWC Imperiled Species Regulations

Eliminates requirements for state permits for take or incidental take of T&E species if authorized by FWS or NMFS.

Specifies that a FWC permit for take or incidental take of T&E species will only be issued if specifically authorized under written agreement or regulatory delegation by FWS or NMFS.

Provides that FWC may issue permits authorizing incidental take of state listed species *when there is a scientific or **conservation** benefit and...the permitted activity will not have a negative impact on the survival potential of the species.*

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## Authorization of Take/Incidental Take under the ESA

Section 7(a)(4) for activities *authorized, funded, or carried out* by federal agencies.

Section 10(a)(1)(A) for *scientific purposes*.

Section 10(a)(1)(B) for *any taking otherwise prohibited* [i.e., HCPs].

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## Section 6 Agreement, Standard Language (National)

The [State agency] 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 [State agency] or to a permit applicant authorizing such take.

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## Florida Revision, Scientific Permits for 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. 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.

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## Florida Revision, Scientific Permits for 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.

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## Florida Revision, Incidental Take Permits

*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;*

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*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;*

## Florida Revision, Incidental Take Permits (cont'd)

*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.*

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## Florida Revision, Incidental Take Permits (cont'd)

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**;

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## Florida Revision, Incidental Take Permits (cont'd)

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.

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## What will be in the Permitting Guidelines?

Menu of impact avoidance, minimization, and mitigation measures and any other required permit conditions.

Pre-approved **Best Management Practices** for land management activities.

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## Putting it all together

Revisions in FWC regulations opened the door for reduced duplication of effort.

The Section 6 agreement provides the authorization for FWC to issue permits.

The agreement is a federal action subject to Section 7, eliminating the need for a section 10 permit.

The permitting standards in the Guidelines must meet the more the restrictive of state and federal requirements and in doing so provide for the conservation of the species, thus meeting the intent of Section 6.

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## Status of the Agreement

Signed and in effect as of May 14, 2012.

Duplicate scientific permits are no longer required. If you have either a FWC permit or a FWS permit, you are good to go.

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For maximum customization and efficiency, Guidelines may be developed for species, species groups, and may apply statewide or only in certain localities.

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## Frequently Asked Questions

*Under the agreement, am I now required to get a FWC permit?* **No. The HCP process with the Service is still available.**

*Do I have a say so in the Guidelines?* **Yes. FWC will seek stakeholder input and the Federal NEPA document will be noticed in the FR for public comment.**

*How will this impact the Section 7 process?* **Expect that any Guidelines will result in an affects "key" for use by Federal agencies.**

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## Frequently Asked Questions (cont'd)

*Why is this a good thing?* **It can provide for improved species conservation as well as streamlined and certain outcomes for developers.**

*Does the permitting authority cover all federally-listed species?* **No, only species for which FWC has constitutional authority and FWS has the federal lead. NMFS is not a signatory and species such as manatees and sea turtles are not currently included.**

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## Bottom Line

In addition to the benefits for those holding scientific permits or conducting land management activities, the success will hinge on the specifics in the Guidelines. They only provide benefits if they are used. Thus, finding the sweet spot for species conservation in a manner that is economically viable for the regulated community is key and will require input and participation from all.

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## More Information

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