

**MEMORANDUM OF UNDERSTANDING**

**Between**

**THE U.S. FISH AND WILDLIFE SERVICE**

**And**

**THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

**I. Background:**

This Memorandum of Understanding (MOU) is entered into on January 18, 2012 between the U.S. Fish and Wildlife Service, a federal agency (SERVICE) and the Florida Fish and Wildlife Conservation Commission, an agency of the State of Florida (COMMISSION).

Both the COMMISSION and the SERVICE have a vested interest in providing public access on lands acquired as units of the proposed Everglades Headwaters National Wildlife Refuge (REFUGE, NWR). Objectives for the REFUGE include protecting and managing habitat for fish and wildlife (including threatened and endangered species); and providing connectivity between existing conservation lands; and improving water quality within the Everglades watershed; and to provide hunting, fishing and other identified priority public use on REFUGE lands. SERVICE policy provides the authority and opportunity to allow existing priority public uses to continue, at current levels, upon the acquisition of an area with the capacity to support said public use. It is the intent of the SERVICE to implement and support hunting and fishing programs, as well as other priority public uses, in a continuous manner upon acquisition.

During the development of the Draft Land Protection Plan and Environmental Assessment for the Proposed Establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area, the SERVICE and the COMMISSION began discussions related to the management of the hunting and fishing programs on the REFUGE. These discussions led to the initial understanding that the SERVICE has an interest in working with the COMMISSION to provide hunting and fishing opportunities to the public, and to manage REFUGE lands as a unit(s) of the State's Wildlife Management Area (WMA) program.

It is the intent of both the SERVICE and the COMMISSION to work cooperatively in the management of the REFUGE's hunting and fishing programs, with the COMMISSION having

the responsibility for the conduct of the hunting and fishing programs as part of their WMA program in accordance with procedures outlined in COMMISSION document entitled Establishment and Rule Promulgation for Areas Managed Wholly or Cooperatively by FWC, December 2010. The SERVICE has identified up to 50,000 acres to be acquired for the Everglades Headwaters NWR which would be available to be included in the WMA program.

## **II. Authority:**

This MOU is entered into under the authority of the Migratory Bird Conservation Act of February 18, 1929 (16 U.S.C. 715-715r), as amended; Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934 (48 Stat. 451) as amended (16 U.S.C. 71 8 et seq.); Fish and Wildlife Act of August 8, 1956 (70 Stat 1119), as amended; Land and Water Conservation Fund Act of 1956 (16 U.S. C. 669-669i) as amended; Emergency Wetlands Resources Act (16 U.S.C. 3901-3932), Federal Grant and Cooperative Agreement Act of 1977, Fish and Wildlife Coordination Act of 1934 (16 US 761); National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act). FWC: Article IV, Section 9, Florida Constitution

## **III. Purpose**

WHEREAS, the SERVICE is a federal agency with wildlife management responsibilities, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the SERVICE has proposed to acquire, through purchase, donations or management agreements, certain lands encompassing approximately 50,000 acres of the Everglades Headwaters NWR; and

WHEREAS, the Improvement Act requires that lands owned by the SERVICE be managed for "wildlife first" and maintained in an environmentally acceptable manner, and to the extent practicable, in such a way as to restore biological integrity, diversity, and environmental health; and

WHEREAS, the aforesaid legislation encourages the use of said lands acquired to be used for public outdoor recreational activities compatible with the primary goals of the REFUGE; and

WHEREAS the aforesaid legislation identifies six primary public uses to be encouraged and allowed on said lands (hunting, fishing, photography, environmental education, interpretation, and wildlife observation) where these activities support and compliment the purposes for the establishment of the refuge; and

WHEREAS, the COMMISSION is an agency of the State of Florida charged with the responsibility for protecting and managing Florida's fish and wildlife resources for their long-term well-being and the benefit of people; and

WHEREAS, the COMMISSION currently manages an extensive network of public hunting

lands known as Wildlife Management Areas (WMA); and

WHEREAS, the COMMISSION has established evaluation procedures for evaluating and assessing lands for the establishment and management of WMA's outlined in COMMISSION document entitled Establishment and Rule Promulgation for Areas Managed Wholly or Cooperatively by FWC, December 2010.

WHEREAS, the COMMISSION's current establishment procedures and management practices for existing WMA's are recognized by the SERVICE as being consistent with the SERVICES management responsibilities and mandates.

WHEREAS the SERVICE has committed to working with the COMMISSION to ensure lands acquired are expeditiously made available for public hunting.

WHEREAS, the COMMISSION and the SERVICE wish to establish a MOU as to the manner in which the COMMISSION will plan and implement a program for the management of hunting and fishing opportunities on the Everglades Headwaters NWR in cooperation with the SERVICE; and

WHEREAS, the SERVICE, has the authority to enter into this MOU with the COMMISSION;

NOW THEREFORE, the SERVICE and the COMMISSION, in consideration of the mutual benefits flowing from each to the other, do hereby agree to enter into this MOU to facilitate cooperation and enabling COMMISSION management of the hunting and fishing program for the Everglades Headwaters NWR.

#### **IV. Coordination:**

The SERVICE and COMMISSION collectively have complimentary responsibilities and shall cooperate on the management of hunting and fishing programs in concert with other resource objectives. It is therefore appropriate and desirable that these agencies join together in this MOU to fulfill mutual objectives for providing hunting and fishing opportunities.

#### **V. Scope of Effort:**

For a period as hereinafter set forth, the SERVICE and COMMISSION shall cooperate as necessary for the performance of work as set forth below:

Responsibilities of the COMMISSION:

- A. The COMMISSION shall administer the hunting and fishing program on the Everglades Headwaters NWR.
- B. The COMMISSION shall designate the Everglades Headwaters NWR as a unit of the

COMMISSION's WMA program: the Everglades Headwaters Wildlife Management Area or units thereof.

- C. The COMMISSION shall provide for specific uses and regulation of the WMA lands, consistent with this MOU, SERVICE and COMMISSION rules and regulations.
- D. COMMISSION management of the WMA lands under this MOU shall be for the implementation of programs for public hunting and fishing including responsibility for establishing hunting and fishing programs, seasonal limits, amount of harvest allowed, off highway vehicle use on designated roads and trails, and for determining related public access for such activities under established COMMISSION procedures for seeking public input and setting regulations on other WMAs in Florida.
- E. The COMMISSION shall provide support, when possible, in the form of staff technical assistance, use of state owned equipment and facilities (subject to the limitations set forth below) and/or available funding to achieve the objectives of this MOU.

Responsibilities of the SERVICE:

- A. The SERVICE is authorized and mandated, to provide for overall management of the Everglades Headwaters NWR, including all management not provided by the COMMISSION under this MOU.
- B. COMMISSION management of the WMA lands under this MOU shall be consistent with the SERVICE's overall management responsibilities and mandates.
- C. The COMMISSION shall have full and free access to the WMA lands for the purposes set forth in this MOU, and the SERVICE shall take all steps necessary to provide for such access by the COMMISSION.
- D. The SERVICE shall provide support, when possible, in the form of staff technical assistance, use of SERVICE owned equipment and facilities (subject to the limitations set forth below) and/or available funding for projects to achieve the objectives of this MOU.

Responsibilities of both parties:

- A. The COMMISSION and SERVICE agree to coordinate on all matters of mutual interest involving the management of the Everglades Headwaters NWR/WMA.
- B. The COMMISSION and SERVICE, in coordination and mutual agreement, may close parts or all of Everglades Headwaters NWR/WMA during drought, flood, fire or other hazardous condition.
- C. It is understood and agreed that each party operates under its own legal authorities, policies and administration, and each party's obligations under this MOU are thereby limited.
- D. It shall be the responsibility of each party to interpret its own authorities and policies, and make decisions as required under law and policies applicable to each.
- E. Nothing in this agreement shall be construed as obligating the SERVICE or COMMISSION in the expenditure of funds, future payment of money, or in the use of equipment or facilities unless specifically identified within this document.
- F. All funding will be accomplished through a separate instrument such as a purchase order, Challenge Cost Share Agreement, or Cooperative Agreement.

## **VI. Period of Performance**

The period of performance of the MOU shall commence on the date of execution of this MOU and continue for a period of 15 years, at which time both parties will review and assure the terms and conditions are current and that the purpose of the agreement remains in effect. The MOU is subject to automatic renewal pending review and concurrence by both parties. The MOU may be terminated by either party pursuant to Article IX below.

## **VII. Project Officers**

The parties shall direct all matters arising in connection with the performance of this MOU, other than notices, to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this MOU. Should either party change its address, written notice of such new address shall promptly be sent to the other party.

### **A. Florida Fish and Wildlife Conservation Commission**

Mike Brooks  
Division of Habitat and Species Conservation  
620 South Meridian Street  
Tallahassee Florida

### **B. U.S. Fish and Wildlife Service**

Charles Pelizza  
Pelican Island NWR Complex  
4055 Wildlife Way  
Vero Beach, Florida 32963

## **VIII. Modification of Agreement:**

This MOU constitutes the full, complete, and entire agreement between the parties hereto. No modification or amendment of this MOU shall be binding on either party unless such modification or amendment shall be in writing executed in duplicate by both parties hereto, attached to this MOU, and incorporated in and by reference made a part of this MOU.

## **IX. Termination of Agreement:**

This MOU may be terminated by either party for convenience upon 30 days written notice of such termination to the other party. If either party fails to fulfill its obligations under this MOU

in a timely and proper manner, the other party shall have the right to terminate this MOU by giving written notice of any deficiency. In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation. This MOU has no third-party beneficiaries (intended or incidental), who may enforce obligations of either party should the MOU be terminated.

**X. Other Terms and Conditions:**

The COMMISSION and the SERVICE, their employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this MOU.

The SERVICE'S support and/or funding of this MOU shall be specified in a separate document, a Cooperative Agreement. The form of in-kind services, assistance to the COMMISSION in the implementation all aspects of WMA management and funding of this MOU will be specified in the Cooperative Agreement.

1. It is agreed by the parties hereto that, in the performance of this MOU, employees or agents of the Commission are not to be considered employees of the SERVICE.
2. It is hereby understood and agreed by the parties hereto that the SERVICE shall not be bound to make any expenditures under the terms of this MOU, except as funds are available by appropriation of the Congress of the United States.
3. The participation of the SERVICE and COMMISSION in activities conducted pursuant to this MOU is not intended to place either party or its representatives in a position of incurring tort liability arising from an action of the other party. Each party is responsible for any injury or property damage to third parties caused by negligence of its own employees acting within the scope of their employment/official duty subject to such limitation as may be prescribed by applicable laws. Specifically, tort liability arising from negligent or wrongful acts or omissions of SERVICE employees acting within the scope of employment shall be adjudicated pursuant to the Federal Tort Claims Act (28 USC 2671 – 2689). Likewise, tort liability arising from negligent or wrongful acts or omissions of COMMISSION employees while acting within the scope of official duty shall be governed by the provisions of state law. However, nothing herein shall constitute a waiver by either party of sovereign immunity or statutory limitations on liability
4. No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this MOU, or to any benefit that may arise therefrom.
5. Employee injury or death arising from activities conducted in fulfillment of this memorandum and within the scope of employment/official duty of the respective party shall be exclusively considered as a workers' compensation matter respective of the involved party as substantiated by the employer/employee relationship. Service employees are afforded workers' compensation coverage via provisions of the Federal Employee's Compensation Act (FECA – 5 USC 8101), whereas, Department employees are afforded coverage via provisions of the XXX.

6. During the performance of this MOU, the parties hereto agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin.

## **XI. State Required Clauses**

a. Non-discrimination. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.

b. Prohibition of Discriminatory Vendors. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a \_\_, supplier, sub \_\_, or consultant under a contract with any public entity; and may not transact business with any public entity.

c. Public Entity Crimes. In accordance with Section 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a grantee, \_\_, supplier, sub \_\_, consultant or by any other manner under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list.

d. Legislative appropriation. For contracts whose term extends beyond the State fiscal year in which encumbered funds were appropriated, the State of Florida's performance and obligation to pay is contingent upon an annual appropriation by the Legislature

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by an authorized official on the date and year set forth below their signature.

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

BY: Cynthia Dohner

TITLE: Cynthia Dohner, Regional Director

DATE: 1-18-12

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

BY: Nick Wiley

TITLE: Nick Wiley, Executive Director

DATE: 1-18-12



