



# Florida Department of Environmental Protection

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3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

November 8, 2007

VIA FACSIMILE

Ms. Gail Carmody  
Supervisor, Ecological Services  
U.S. Fish and Wildlife Service  
1601 Balboa Ave.  
Panama City, FL 32405-3721

Mr. Curtis M. Flakes  
Chief, Planning and Environmental Division  
Mobile District, U.S. Army Corps of Engineers  
P.O. Box 2288  
Mobile, AL 36628-0001

RE: ESA Section 7 Consultation on Proposed "Exceptional Drought Operations"  
(November 1, 2007)

Dear Ms. Carmody and Mr. Flakes:

Florida is sensitive to the concerns about the impacts of the current Southeastern drought expressed by the Corps and Florida's upstream neighbors. Governor Crist looks forward to hosting Governors Riley and Perdue in Tallahassee on December 12, 2007. That meeting represents the best opportunity for the three states to work toward a more holistic solution to address water management in the Apalachicola-Chattahoochee-Flint River Basin. Neither the Corps nor the Service should make any long-term commitments about the future of reservoir operations until that meeting has occurred and the three States are afforded an opportunity to move forward together.

The State of Florida opposes the Corps' proposed Exceptional Drought Operations ("EDO") protocol as articulated in Mr. Flakes' letter dated November 1, 2007, and the accompanying *Biological Assessment, Temporary Modifications to the Interim Operating Plan for Jim Woodruff Dam and the Associated Releases to the Apalachicola River* ("BA"). If implemented, the EDO would starve the Apalachicola River and Bay of freshwater flows needed to keep the ecosystems, species, and economy alive. The Corps' modeling shows the EDO would be in place through 2010, effectively capping Apalachicola River flow at between 4,150 - 5,000 cubic feet per second ("cfs") during that period, and

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allowing the Corps to store *all* Basin Inflow above that cap. Thus, the EDO would result in unprecedented declines in River levels and cause irreparable harm to Gulf sturgeon and federally protected mussel populations. The magnitude of freshwater depletions expected under the EDO would not only precipitate a catastrophic collapse of the oyster industry in Apalachicola Bay but also displace the entire economy of the Bay region. While Florida appreciates the concerns expressed in Mr. Flakes' letter and the BA, the EDO has a high potential to cause significant harm to the people of Florida and our natural resources.

Specifically, any biological opinion developed by the Service as a result of your consultation should be limited in scope and expire by its own terms no later than February 15, 2008. During the November 1, 2007 meeting in Washington, D.C., it was clearly articulated that the three states need to identify a long term solution to the Apalachicola-Chattahoochee-Flint and Alabama-Coosa-Tallapoosa River Basins to avoid further harm to the people and resources of all three states. Any short-term action taken by the Service and the Corps should not adversely affect the opportunity for the three states to work toward a reasonable solution to the current situation. If the States are unsuccessful at reaching a resolution, the Corps can reinitiate consultation and, as appropriate, adjust operations based on the hydrologic status of the Basin at that time. Given the uncertainty surrounding possible inflows to the reservoir system and the biological response of the Apalachicola River and Bay to any reduction in flow, such a deliberative short-term approach, consistent with principles of adaptive management, is required.

In addition, in light of the extraordinary time constraints self-imposed for your consultation (14 days, rather than the standard 135), it is doubtful that the Biological Opinion will adequately address the issues identified by the Florida Fish and Wildlife Conservation Commission in its November 7, 2007 letter relating to the impacts of sustained low flows in the Apalachicola Basin on protected species and Bay water quality and resources. The Service is well aware that the current flow of 5,000 cfs has restricted the Apalachicola River to its mainstem, and that virtually none of the floodplain is currently connected to the River. This has adversely affected 80 percent of the Apalachicola River fish species normally reliant on the floodplain for one or more life cycle functions and has severely limited if not precluded mussel reproduction. At a flow of 5,000 cfs, approximately 75 percent of known Gulf sturgeon spawning habitat is eliminated. If such a level were sustained for the long-term, it would disrupt river flow and temperature variations, both of which are essential to cue spawning behavior. The

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EDO will further exacerbate these impacts, potentially disrupting or eliminating reproduction of these listed species for at least two years.

Florida's concerns are not limited to the species that must be accommodated in your consultation. Based on observations this summer, Florida anticipates that the EDO will significantly exacerbate higher salinities, resulting in increased disease and predation, potentially crippling the oyster and seafood industry in the Bay area. This is yet another reason to restrict the duration of your biological opinion (and any incidental take statement) to February 15, 2008.

In light of the above, Florida believes the EDO as proposed and implemented beyond February 15, 2008, would inescapably result in "jeopardy" to the Gulf sturgeon and the mussel species and "adversely affect" critical habitat designated and proposed for these species. Accordingly, Florida fully expects the Service to develop a "reasonable and prudent alternative", 16 U.S.C. § 1536(b)(3)(A), to the EDO that avoids that result. The Florida Fish and Wildlife Conservation Commission has offered its technical assistance by providing the Service with a list of key issues that any forthcoming biological opinion must address. We look forward to seeing your analysis of those issues and your recommendations on how to manage Florida's concerns.

Should you have any questions or wish to discuss these issues further, I will make myself or my staff available as needed.

Sincerely,



Michael Sole  
Secretary

cc: Gov. Charlie Crist  
Hon. Dirk Kempthorne  
Lt. Gen. Robert L. Van Antwerp  
Col. Byron Jorns  
Mr. Dale Hall  
Mr. Sam Hamilton  
Mr. Ken Haddad