



DEPARTMENT OF THE ARMY  
MOBILE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, ALABAMA 36628-0001

JUN 28 2006

REPLY TO  
ATTENTION OF:

Inland Environment Team  
Planning and Environmental Division

Ms. Gail Carmody  
Field Supervisor  
U.S. Fish and Wildlife Service  
1601 Balboa Avenue  
Panama City, Florida 32405-3721

Dear Ms. Carmody:

This is in response to your letter of June 13, 2006, which requested an extension of the formal consultation period to allow sufficient time to consider the additional information provided by the Corps and others during the consultation period. This letter also confirms that the U.S. Army Corps of Engineers (Corps), Mobile District, has provided additional data for your consideration and incorporation into the biological opinion associated with our water management operations at Jim Woodruff Dam, pursuant to our request to initiate formal Section 7 consultation under the Endangered Species Act.

Our letter dated March 7, 2006 requested the initiation of formal consultation and included an Interim Operations Plan (IOP) summarizing how we planned to operate at Jim Woodruff Dam pending completion of consultation. By letter dated June 12, 2006, Mobile District provided clarifications on how we will monitor and track basin inflows and our releases. We also submitted a proposed adjustment to the flow thresholds for the months of June through February in the IOP. These clarifications and adjustment were proposed in order to improve the efficiency and manageability of our project operations while still meeting the needs of the federally-listed species and critical habitat on the Apalachicola River (the threatened Gulf sturgeon, critical habitat for the Gulf sturgeon, the threatened purple bankclimber mussel, and the endangered fat threeridge mussel). We also requested that your agency incorporate our assessment of the impacts of our Jim Woodruff Dam operations on proposed critical habitat for the listed mussel species on the Apalachicola River into the biological opinion (proposed critical habitat was published in the Federal Register on June 6, 2006). On June 19, 2006, we provided updated HEC-5 modeling results depicting the impacts of the adjusted IOP on river flows and reservoir levels within the Apalachicola, Chattahoochee, Flint Rivers (ACF) basin posted at the following FTP site: <ftp://ftp.sam.usace.army.mil/pub/actacf>.

We understand that your agency is also awaiting preliminary results from a monitoring study by the State of Florida of Gulf sturgeon spawning success during the 2006 spring spawning season, and that you are completing an assessment of the quantity of Gulf sturgeon habitat by

flow, and initiating analysis of additional mussel survey information collected by the State of Florida this spring. Additional information may also be provided by other parties or stakeholders relating to the biological basis for and operations under the proposed IOP.

For your information, the Mobile District has also agreed to host a follow-on modeling workshop to share the results of our HEC-5 modeling of both the original IOP and the adjusted IOP with the technical representatives from the States of Alabama, Florida and Georgia, as well as other interested stakeholders. At this workshop we will describe the biological basis for elements of the IOP, describe the modeling approach, assumptions and settings used by Mobile District to represent both the IOP and the adjusted IOP. A notice will be coming to you in the near future with the time, date, and location for the workshop. Your participation in this workshop is requested. Any relevant information presented or developed at this workshop will be provided to your agency to assist in completing the biological opinion.

We believe that the proposed adjustments to the IOP will improve our ability to effectively operate to meet the needs for the federally listed species and critical habitat. We also agree that our modeling results, as well as the new information provided by the Corps and others, will substantially improve the information base upon which the biological opinion will be based. Therefore, we agree it is appropriate to extend the formal Section 7 consultation period for an additional 45 days. This will extend the date for completion of consultation from the previously agreed to date of July 21, 2006 to the extended date of September 5, 2006.

By this letter we also provide notice that we have modified our current water management operations and releases at Jim Woodruff Dam due to the issuance of a temporary restraining order (TRO) (and subsequent amendments or modifications to the TRO) by the U.S. District Court, Northern Alabama District on June 22, 2006, as a result of litigation filed by the State of Florida. The initial TRO requested that releases be increased to provide a minimum flow of 8,000 cfs at the Chattahoochee gage. Subsequent modifications to the TRO have required us to gradually ramp down flows, beginning on June 23, 2006, by no more than 0.25 foot per day, pending a possible agreement by the States of Alabama, Florida and Georgia on a temporary alternative operation protocol while formal consultation continues. It is our intention for our operations to revert back to the IOP or adjusted IOP once the TRO or any subsequent injunction has been lifted.

We previously determined that the continued operations under the IOP or adjusted IOP would not result in jeopardy to the listed species, or adverse modification or destruction to critical habitat for the listed species. Nor would the continued operations under the IOP or adjusted IOP result in the irreversible or irretrievable commitment of resources which would foreclose the development of reasonable or prudent alternatives to avoid jeopardy, or reasonable prudent measures to minimize adverse effects on the listed species or critical habitat. We also previously concluded that our operations under the IOP or adjusted IOP are not likely to alter or destroy the primary constituent elements of proposed critical habitat for the listed mussel species to the extent that survival or recovery of these species would be appreciably reduced; and that this critical habitat will remain functional to serve its intended conservation role for the species.

As such, our operations under the IOP or adjusted IOP under the extended consultation period are not likely to result in the destruction or adverse modification of the proposed critical habitat for the federally-listed mussel species on the Apalachicola River. We also note your previous guidance that a conference report would be prepared to address the potential for impacts to the proposed critical habitat, which indicates a determination of no jeopardy to the species or no adverse modification to proposed critical habitat. We request your concurrence with our conclusions and ask that your determination be incorporated into the biological opinion for the ongoing Section 7 consultation.

If you have any questions regarding our consultation or the information provided to date, please feel free to contact Ms. Joanne Brandt of the Inland Environment Team, (251) 690-3260, or Email: [joanne.u.brandt@sam.usace.army.mil](mailto:joanne.u.brandt@sam.usace.army.mil). We look forward to continued progress as we work with you and your staff to complete our respective consultation responsibilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis M. Flakes", with a long horizontal line extending to the right.

Curtis M. Flakes  
Chief, Planning and Environmental  
Division