



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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June 22, 2011

Col Steven J. Roemhildt
Commander, Mobile District
U.S. Army Corps of Engineers
P.O. Box 2288
Mobile, Alabama 36628-0001

Dear Col. Roemhildt:

This is in reference to the Biological Opinion (BO) on the U.S. Army Corps of Engineers, Mobile District, Revised Interim Operating Plan (RIOP) for Jim Woodruff Dam and the Associated Releases to the Apalachicola River, issued by the U.S. Fish and Wildlife Service (Service) on June 1, 2008, per section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). In the BO, the Service determined that the RIOP would not jeopardize the continued existence of the threatened Gulf sturgeon (*Acipenser oxyrinchus desotoi*), endangered fat threeridge mussel (*Amblema neislerii*), threatened purple bankclimber mussel (*Elliptioideus sloatianus*), and threatened Chipola slabshell (*Elliptio chipolaensis*), nor destroy or adversely modify their designated critical habitats. An Incidental Take Statement (ITS) was issued to exempt the Corps from the prohibitions of section 9 of the Act and to minimize the impacts of incidental take on these species. The ITS authorized the taking of a maximum of 200 purple bankclimbers, 100 Chipola slabshells, and 21,000 fat threeridge when the minimum flow of the Apalachicola River is reduced to 4,500 cfs.

On June 20, 2011, the Service was notified by email from [REDACTED] (Chief, Water Management, Mobile District) that the U.S. Geological Survey (USGS) adjusted the rating curve for gage number 02358000 (Chattahoochee gage). As noted in the email, the adjustment was prorated to the last discharge verification on April 28, 2011. The adjustment results in provisional discharge data indicating releases have been less than 5,000 cfs frequently in the past 30 days, with a minimum instantaneous discharge of 3,620 cfs. The Service understands that the Corps did not knowingly violate the minimum releases prescribed by the Corp's RIOP, and releases were immediately adjusted from the projects so that the discharge from Woodruff was consistent with the RIOP. Flows above the 5,000 cfs minimum flow were restored on June 20.

The ITS included Terms and Conditions of Reasonable and Prudent Measures (RPM) to address unforeseen circumstances such as this adjustment in the rating curve. RPM 2008-2c requires that the Corps "establish internal communication procedures to address unanticipated events that could have adverse effects to listed species. These procedures should be written and include 1) alerting the Service and appropriate State agencies, and 2) completing a summary on how the

event was handled and recommendations to further improve procedures that will assist in minimizing harm to listed species". By letter dated August 29, 2008, the Corps completed this RPM by describing the Standard Operating Procedure (SOP) for daily operational decisions. The Corps noted an additional SOP would be drafted and implemented to accelerate recognition and response to mechanical failures, including provisions requiring project operators to regularly evaluate the Chattahoochee gage data and other mechanisms to avoid releases less than the daily average minimum flow. Please advise us of the status of this additional SOP. Due to the importance of this gage, the Service recommends that the Corps work with the USGS to assure that the accuracy of the rating curve is assessed at least monthly. Another option to further improve procedures is to develop and use the relationship between the Corps gage at Woodruff Dam and the USGS Chattahoochee gage to assure consistency of releases.

Although the reduction in the minimum flow was not intended, take of listed mussels has occurred. As required by the ITS, the Corps must report the level of incidental take. RPM 2008-5b requires that the Corps implement the listed mussels take monitoring plan within four days of a reduction in minimum releases from Woodruff Dam to flows less than 5,000 cfs. We do not recommend the current take monitoring plan be implemented. Because flows have been below 5,000 cfs frequently for the last 30 days, it is probable that the incidental take monitoring plan would underestimate the amount of take that occurred. As part of the reinitiated consultation for the RIOP and the fat threeridge, we have been working with [REDACTED] of your staff to assess impacts that result from reductions in flow from 10,000 cfs to 5,000 cfs. We also have recent survey information for purple bankclimbers in the upper river. These data could be shared with your staff and used as part of your take assessment.

We are willing to discuss the best path forward for the Corps to monitor and report the level of take that has occurred for all three listed mussel species in the Apalachicola River. We will also consider any ramifications of the adjusted rating curve to the ongoing reinitiated consultation for fat threeridge. Please advise us of any additional actions you are taking, and please contact myself or [REDACTED] at extension [REDACTED] or [REDACTED] if you would like to discuss take monitoring or reporting.

Sincerely,

//s//Dr. Donald W. Imm

Dr. Donald W. Imm
Project Leader

cc:

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USFWS, Regional Director, Atlanta GA
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