



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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March 9, 2006

Curtis M. Flakes
Chief, Planning and Environmental Division
Mobile District, Corps of Engineers
P.O. Box 2288
Mobile, Alabama 36628-0001

Re: Jim Woodruff Dam Interim Operations
Calhoun, Franklin, Gadsden, Gulf, Jackson,
and Liberty counties, FL
FWS Log No. 4-P-06-138

Dear Mr. Flakes:

The Service acknowledges receipt on March 8, 2006, of your letter dated March 7, 2006, requesting initiation of formal consultation under section 7 of the Endangered Species Act (ESA). This consultation concerns the effects of the Corps' proposed interim operations of Jim Woodruff Dam (the proposed action) on the Gulf sturgeon and its designated critical habitat, and on two freshwater mussels, the fat threeridge and purple bankclimber. Jim Woodruff Dam is the downstream-most project in the Corps' system of dams and reservoirs in the Apalachicola-Chattahoochee-Flint (ACF) River Basin, and is the upstream limit of the range of the three listed species and of designated critical habitat in the Apalachicola River. The proposed action is a set of interim operations for the Corps' ACF reservoir projects as a system, not at each project separately, expressed in terms of year-round releases from Jim Woodruff Dam. The term "interim" recognizes that the Corps anticipates updating its Water Control Plan for the ACF projects, at which time we would again consult with you.

All information required of you to initiate consultation was either included with your letter or is otherwise available to the Service. Section 7 allows the Service up to 90 calendar days after receipt of a complete initiation request to conclude formal consultation with your agency and an additional 45 calendar days to prepare our biological opinion. If necessary, the Corps and the Service may extend this time frame by mutual agreement; otherwise, we expect to provide you with our biological opinion no later than July 21, 2006.

During formal consultation, the Service shall: 1) review all information relevant to the proposed action and the listed species; 2) evaluate the current status of the listed species and designated critical habitat; 3) evaluate the effects of the proposed action and cumulative effects on the listed species and designated critical habitat; 4) formulate a biological opinion as to whether the proposed action, taken together with cumulative effects, is likely to jeopardize the continued existence of the listed species or adversely modify designated critical habitat; 5) discuss with the Corps the basis for any finding in the biological opinion and, if necessary, work with you to identify reasonable and prudent alternatives that would avoid jeopardy or adverse modification; 6) formulate discretionary conservation recommendations that will assist the Corps in reducing or eliminating impacts to listed species and designated critical habitat; 7) formulate a statement concerning incidental take, if such take may occur; and 8) use the best scientific and commercial data available, and give appropriate consideration to any beneficial actions taken by the Corps, including actions taken before consultation was initiated. If jeopardy or adverse modification is not likely, but the proposed action may take listed species incidental to otherwise lawful activity, we will work with you to identify reasonable and prudent measures that minimize the amount or extent of such take.

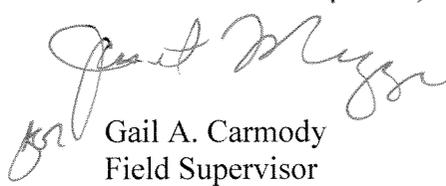
Your letter also requests Service concurrence with a determination that the Corps' water management operations at Jim Woodruff Dam, and the associated releases to the Apalachicola River, are not likely to jeopardize the continued existence of federally listed species or result in the adverse modification of designated critical habitat. The Service makes jeopardy and adverse modification determinations for listed species and designated critical habitats only within a biological opinion. As described above, the Service will formulate a biological opinion for the proposed action no later than July 21, 2006, unless our agencies agree to an extension.

It is the responsibility of the federal action agency to make jeopardy and adverse modification determinations only in the case of species that are proposed for listing and areas that are proposed for designation as critical habitat, respectively (section 7(a)(4) of the ESA). The Service is presently considering whether it is prudent to designate critical habitat for seven freshwater mussels, including the two listed mussels that are named in this consultation. Under a settlement agreement stemming from a lawsuit filed in the U.S. District Court for the Northern District of Georgia (Civil Action No. 1:04 CV-0729-GET), the Service shall publish in the Federal Register on or before May 30, 2006, a prudency determination regarding critical habitat for the seven mussels, and if prudent, a proposed rule designating critical habitat. We cannot at this time announce or presume the outcome of that process; however, should we propose critical habitat that is within the area affected by the proposed action of this consultation, the conference provisions of section 7(a)(4) would then apply to this action. If so, we will work with you at that time to determine how we may best comply with our additional section 7 responsibilities in concert with this consultation.

As a reminder, the ESA requires that after initiation of formal consultation, the Federal action agency may not make any irreversible or irretrievable commitment of resources that limits future options. This practice insures agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of listed species or adversely modifying designated critical habitat.

The Service appreciates the Corps' cooperation in defining ACF project operations that avoid or minimize impacts to the listed species and designated critical habitat. The proposed action represents a substantial and meaningful step towards operations that contribute to conservation of the species. We look forward to working with you further in the coming weeks

Sincerely yours,



Gail A. Carmody
Field Supervisor

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