



IN REPLY REFER TO:

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

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March 27, 2009

Mr. Curtis Flakes  
Inland Environment Team  
Planning Environmental Division  
Mobile District, Corps of Engineers  
P.O. Box 2288  
Mobile, Alabama 36628-0001

Dear Mr. Flakes:

The purpose of this letter is to give you our assessment of the current status of the Corps' implementation of the five Reasonable and Prudent Measures (RPMs) that were included in the Incidental Take Statement of our June 1, 2008, Biological Opinion for the Jim Woodruff Dam Revised Interim Operating Plan (RIOP). RPMs, with their accompanying Terms and Conditions, are intended to minimize the impacts, i.e., amount or extent, of incidental taking on listed species. Taking that is incidental to the actions of a federal agency is not considered prohibited taking under the Endangered Species Act provided that such taking is in compliance with the Terms and Conditions of an Incidental Take Statement (section 7(o)(2)). Your annual report dated January 31, 2009, reports the Corps' compliance with the RPMs of the 2008 Opinion.

With some exceptions, which we note in this letter, the Fish and Wildlife Service (Service) agrees with the descriptions of progress on the RPMs in the annual report. The table on page 2 summarizes our view of the status of each condition under the five RPMs. As indicated in the table, further clarification of the implementation of RPMs 1c, 2a, 2b, and 5d is needed.

By email dated March 6, 2009, Mr. Peter Taylor, Chief of Staff, indicated that the Corps needed additional time to complete RPM 1c, which is an evaluation of tools and techniques to improve the Corps' ability to forecast flows and levels during drought and to more realistically simulate fall rates. We understand that the ACF ResSim model is now in a form considered ready to use and that it adequately represents fall rates at Woodruff dam. We also understand that the ResSim model should serve well as a tool for monthly operating decisions under the RIOP, such as estimating flows and levels given alternative basin inflow forecasts. Preferred methods for developing such forecasts are still evolving. In reply to the March 6 email, we suggested May 31, 2009, as a new completion date for RPM 1c. Please let us know whether this is agreeable to the Corps.

RPM / Condition		Status	
1	Adaptive management		
	a	Semi-annual meetings.	OK <sup>a</sup> . Need Memo for Record of our February 9, 2009, meeting.
	b	Assume responsibility.	OK. See 5d.
	c	Hydrologic modeling & forecasting tools.	Time extension requested.
	d	Annual report.	OK.
	e	Monthly RIOP status report.	OK.
2	Drought operations		
	a	Clarify criteria for 4,500 cfs minimum flow decision.	Criteria vague.
	b	Describe methods for estimating impacts to project purposes if minimum flow not reduced to 4,500 cfs.	Methods description too general.
	c	Establish communication procedures for unanticipated events.	OK.
3	Basin inflow	Methods for estimating depletions.	Evaluation due June 1, 2009.
4	Fall rates	Update assessment of RIOP fall rates.	OK.
5	Monitoring		
	a	Sturgeon recruitment.	OK.
	b	Mussel take monitoring plan.	OK.
	c	Update mussel depth distribution data.	OK.
	d	Various mussel studies.	Need documentation of efforts to secure funding for studies not yet implemented due to lack of funding.

<sup>a</sup> The Service agrees with the status characterization in the January 31, 2009, Annual Report.

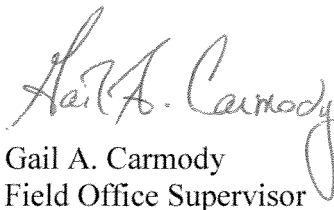
We are hopeful for substantial progress on RPM 1c because improved models and forecasting techniques will play an important role in a decision under the RIOP to reduce minimum releases to 4,500 cfs. As you know, take of listed species that is anticipated for the RIOP would occur as the result of reducing releases to 4,500 cfs one time. If severe drought conditions persist, a decision to reduce releases to 4,500 cfs could become necessary later this year. The intent of RPM 1c overlaps somewhat with that of RPM 2, conditions a and b, which are focused specifically on the 4,500 cfs decision. By letter dated August 29, 2008, the Corps provided a response to RPM 2. By letter dated October 20, 2008, we asked to discuss the RPM 2 response during our next semi-annual meeting about the RIOP RPMs. We met with Mobile District staff on November 5, 2008, and again on February 9, 2009. In these meetings, we expressed our concern that the decision to reduce the minimum release from 5,000 cfs to 4,500 cfs could occur unnecessarily. It is reasonable and prudent to avoid an unnecessary taking of listed species.

The RIOP provides for reducing the minimum release to 4,500 cfs when composite conservation storage declines into a defined “drought zone” and when other information indicates that such action is warranted. The August 29, 2008, response to RPM 2a says that the Corps may continue to release at least 5,000 cfs after storage enters the drought zone if the Corps’ “analysis suggests that storage levels will improve or not significantly deteriorate from the current level.” The response to RPM 2a does not define a significant deterioration.

The response to RPM 2b alludes to a possible definition of a significant deterioration with the statement: “One of the major considerations for assessing impacts to project purposes is when composite conservation storage would be depleted.” Conservation storage is exhausted when cumulative releases exceed cumulative basin inflow and the volume of the remaining conservation storage. In 2007, basin inflow (7-day average) was less than 5,050 cfs (the approximate operating minimum release from Woodruff Dam) for a total of 189 days, with an average deficit of 1,938 cfs. This amounted to a cumulative deficit for the year of about 727,000 acre feet, the greatest ever in the history of the ACF projects. The seasonally variable composite storage drought zone contains about 872,000 acre feet at its highest level (April 1 to July 1). RPM2 requests that the Corps “minimize mussel mortality by using a minimum flow reduction only when it is reasonably certain that doing so will result in an appreciable increase in storage and thereby avoid impacts to other project purposes, including support of minimum releases for water quality and fish and wildlife conservation.” Condition b for RPM2 requires the Corps to “describe, at minimum, the methods by which the Corps will estimate the impacts to other project purposes if a minimum release reduction is not implemented and the expected magnitude and duration of the reduction.” No methods have been provided to date.

We must advise you that if the Mobile District Corps fails to assume and implement the terms and conditions of the June 1, 2008, Incidental Take Statement, the protective coverage of section 7(o)(2) may lapse. Please contact me to discuss these issues at your earliest convenience.

Sincerely,

  
Gail A. Carmody  
Field Office Supervisor

cc:  
DOI Solicitors Office, Atlanta  
DOJ, Washington DC  
USFWS, Regional Director, Atlanta