



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
701 San Marco Boulevard
JACKSONVILLE, FLORIDA 32207-8175

REPLY TO
ATTENTION OF

SEP 09 2016

Planning and Policy Division
Environmental Branch

Cynthia K. Dohner
Regional Director - Southeast Region
U.S. Fish and Wildlife Service
1875 Century Boulevard Northeast, Suite 400
Atlanta, GA 30345

Dear Ms. Dohner:

This is in reply to your July 22, 2016 Biological Opinion for the Everglades Restoration Transition Plan (ERTP). The Biological Opinion (BiOp) addresses the Corps' 2012 Water Control Plan, a document that guides how the Corps manages water for Water Conservation Area 3A, Everglades National Park (ENP), and the South Dade Conveyance System to meet flood control and other Central & Southern Florida Project purposes while avoiding and minimizing adverse effects to threatened and endangered species. Developed in formal Endangered Species Act consultation with the Corps, the BiOp contains the U.S. Fish and Wildlife Service's (Service's) opinion that the Corps' proposed continued operation of the ERTP would jeopardize the endangered Cape Sable seaside sparrow (CSSS) by reducing appreciably its likelihood of survival and recovery. The BiOp also transmits your agency's conclusion that ERTP, as proposed, will not destroy or adversely modify CSSS critical habitat, nor will it jeopardize the endangered Everglades snail kite (or its designated critical habitat), or the threatened wood stork.

For the CSSS, the BiOp presents a recommendation for a Reasonable and Prudent Alternative (RPA), with numerous elements, to the Corps' proposed ERTP action. Main elements of the RPA are:

- a. Habitat Performance Targets
- b. Actions to Move Water East
- c. Surveys and Studies
- d. Adaptive Management

This letter documents our response to the BiOp. To summarize the discussion below, the Corps is taking specific actions to comply with the BiOp's terms and conditions and implementing its RPA.

Habitat Performance Targets. Among its several elements, the BiOp identifies a set of habitat performance targets in Section 7.1.1. that the Service believes will improve conditions for the CSSS and contribute toward the survival and recovery of the species. These include targets for consecutive dry days during the CSSS nesting season, and ranges for a discontinuous hydroperiod within the CSSS marl prairie habitat. Based on current model output, the Service acknowledges in the BiOp that these targets are Service goals for CSSS habitat to achieve over time, and are not technologically feasible for all subpopulations in every year at present. BiOp at Table 34. These modeling results are based on implementation of Increment 2 stages within the L-29 with no seasonal stage constraints (BiOp target date is March 2018) and closure by Everglades National Park (ENP) of the culvert within ENP along the old Tamiami Trail borrow canal at the junction with the ENP Tram Road, which was originally recommended as part of the Corps' 2011 ERTF Environmental Impact Statement.

As the BiOp also acknowledges, reaching the BiOp's "desired targets will require the work of various agencies and construction of additional infrastructure to accomplish." Additional habitat conservation actions by others identified in the BiOp include vegetation management and additional real estate and construction actions. The Corps will continue to work with the Service to identify non-hydrological habitat improvement initiatives that can be implemented by partners in concert with our water management actions. The specific actions that the Service believes the Corps can take as a Federal water manager within southern Florida to help achieve these goals are discussed below.

Actions to Move Water East. In Section 7.1.2(1), the BiOp identifies several actions to reduce the amount of water that currently flows over subpopulation A and to shift those flows to the east while still maintaining the eastern subpopulations. First, the BiOp identifies an expanded closure period of October 1 through July 15 for the S-12A, S-12B, S-343A/B, and S-344 structures. These potential closures are further outlined in Appendix F, which also discusses how to address potential openings between October and November if certain "high water criteria" affecting the critical flood control function of these structures are met. Consistent with this action, the Corps is conducting a National Environmental Policy Act (NEPA) assessment for "Increment 1 Plus" to analyze a set of alternatives including the proposed BiOP operational changes for the WCA 3A water control structures and the expanded operational ranges within the South Dade Conveyance System. Currently, the Corps has begun the process of identifying alternative operational strategies through the NEPA process.

After completing its NEPA assessment, which involves providing an opportunity for public input and consideration of environmental effects and alternatives prior to an agency decision, we plan to adjust our water management operations with respect to the S-12A/B and associated structures as appropriate.

The Corps also remains committed to close coordination with the Service and South Florida Water Management District (SFWMD) to continue to implement operational flexibilities existing within our current Water Control Plan to promote the Service's targets while maintaining other C&SF project purposes. On a present basis, the Corps is maximizing and prioritizing flows from east to west to minimize flow through the S-12A and S-12B and, as appropriate, continuing to assess opportunities to utilize preemptive releases and additional existing flexibility. For example, flexibility provided in the 2016 Emergency Deviation Transitional Period allowed the Corps to delay opening the S-12A, S-12B, S-343A and S-343B structures past July 15, 2016 as requested by the Service. During the 2015-2016 seasonal closure period, the following closure periods were provided for these structures: S-12A was closed October 31, 2015 through August 11, 2016 (gates were partially opened to avoid gate overtopping from February 22 through March 10, in accordance with the current Water Control Plan); S-12B was closed January 1, 2016 through August 9, 2016; S-343A and S-343B were closed October 30, 2015 through August 15, 2016. The Service believes this delayed opening may have benefitted nesting sparrows in subpopulation A. This delayed opening was directly tied to the additional flexibility permitted by the 2016 Emergency Transition Period, given the current hydrologic conditions following the 2016 Emergency Deviation.

Second, Section 7.1.2(1) contains actions for increased water levels at the L-29 canal. Consistent with this action, the Corps is currently assessing options under NEPA to incrementally raise water level stages in L-29 under "Increment 1 Plus" (including consideration of raising L-29 canal levels up to 7.8 ft NGVD), and is planning NEPA analysis for Increment 2 (including consideration of raising levels up to 8.5 ft NGVD). Pending the completion of critical features necessary to operate the North Detention Area construction contracts and the acquisition of real estate interests, we expect Increment 1 Plus operations to be implemented prior to March 2017 and Increment 2 operations to be implemented prior to March 2018, and to adjust our L-29 operations accordingly. On a present basis, the Corps has initiated construction on MWD S-357N and C-111 South Dade Contract 8 and expects to award a construction contract for C-111 South Dade Contract 8A by September 2016. In addition, the Corps is acquiring a flowage easement from the Airboat Association in September 2016 and conducting the Increment 1 Plus NEPA assessment. As the Service has stated in the BiOp, eastern CSSS subpopulations, most notably CSSS-E, are likely to be negatively affected under Increment 2 water management operations that shift more water east to the L-29 Canal and away from CSSS-A.

The Service further iterates that the eastern subpopulations will need to be monitored closely and adaptive operations, including seasonal limitations on water levels in the L-29 canal, may need to be considered during the transitional period.

Third, Section 7.1.2(1) would have the Corps utilize the S-333 structure for increased pre-emptive releases from WCA-3A, while continuing to operate the statutorily-constrained temporary features comprising the Decomp Physical Model (DPM) through FY 2018. With regard to S-333, the Corps is able to continue making preemptive releases consistent within the flexibilities of our current Water Control Plan. Currently, the Corps is maximizing and prioritizing flows from east to west to minimize flow through the S-12A and S-12B and, as appropriate, continuing to assess opportunities to utilize preemptive releases and additional flexibility as provided by the Emergency Deviation Transitional Period.

With regard to the DPM, the Corps agrees that additional testing would provide useful information to support future design efforts while providing incidental benefits to the CSSS. The Corps has received SFWMD's agreement for supporting extended DPM testing for the next three years, and is working collaboratively with SFWMD, U.S. Geological Survey and a multiagency team to prepare for additional testing and complete any necessary permitting and NEPA requirements. This work will build upon recent testing efforts by the Corps. Since November 2013, the Corps has operated the S-152 as documented in the 2010 Environmental Assessment and Design Test Documentation Report and the 2012 Florida Department of Environmental Protection (FDEP) permit. Although the 2010 Environmental Assessment defines an operational window of October 1 through January 31, the FDEP permit truncated the testing window to November-December 2013 and November –January in 2014-2015 and 2015-2016 due to water quality concerns. In 2016, a temporary emergency deviation to the 2012 Water Control Plan enabled utilization of the S-152 structure for purposes of alleviating high water conditions within WCA 3A. During this time period S-152 was operated from February 19 through February 23 and from March 9 through May 3 of 2016. Use of S-152 during the deviation provided opportunities to test dry season flows and the Corps was able to convey 37,000 acre-feet from WCA-3A into WCA-3B during this time period.

The Corps will work with partner agencies to better understand and investigate the ability to utilize this structure outside the defined testing period. However, additional NEPA and an FDEP permit modification will be required, in addition to SFWMD support, for these potential actions. The DPM is of a time-limited nature, and this effort will remain in full compliance with the Water Resources and Development Act of 2000, P.L. 106-541, Section 601(b)(2)(D)(iv), which specifically prohibits appropriations for construction of decompartmentalization projects until the completion of the Modified Waters Deliveries project.

Surveys and Studies. The BiOp RPA also contains the Service's opinion on a number of surveys, studies, and monitoring reports that it believes the Corps should implement to aid the Service's understanding of how hydrologic conditions relate to the CSSS and its habitat. Within Section 7.1.1 ("Targets"), this includes an analysis of daily water-level surfaces and ground elevations in certain Everglades transects (Section 7.1.1(3)), and an analysis of the S-332 Detention Areas to determine how operations of these facilities influence habitats for the eastern CSSS subpopulations during the nesting season (Section 7.1.1(3) (a)). The Corps is prepared to perform these studies and analysis using the technical methods identified in the BiOp. On a present basis, the Corps is working with U.S. Geological Survey to refine the CSSS Sparrow Viewer to include the FWS metrics. The Corps continues to collect data as per the 2010 ERTF BiOp. Daily hydrologic information can be accessed at: <http://w3.saj.usace.army.mil/h2o/inc1/reports.htm>.

Further studies and analyses are identified in Section 7.1.2. These include an analysis of the potential effects of western flows on CSSS-A (Section 7.1.2(3) (i)) and, if necessary, a western flows seepage study analysis (Section 7.1.2(3) (i)). The Corps is in the early stages of working with ENP and FWS to identify survey methods in response, and is exploring potential procurement opportunities to leverage existing studies. We also intend to explore opportunities within the Corps' Western Everglades Restoration Project (WERP) to determine how WERP project features may assist in the effort of moving toward attaining the Service's desired habitat targets. In addition, the Terms and Conditions Section of the Incidental Take Statements for the Everglades Snail Kite and Wood Stork also refer to a number of additional tests, surveys, and studies for the Corps to undertake on behalf of those latter two species. The Corps is currently implementing each of those items.

On August 16-17, and 23, 2016 the Corps held interagency meetings to discuss initial planning efforts for WERP. Presently, the Corps has contracts with University of Florida for both snail kite (Dr. Robert Fletcher) and wood stork (Dr. Peter Frederick) monitoring. The Corps has been actively monitoring snail kites range-wide since 1992 and wading birds since the late 1980's. The Corps also recently completed a 5-year apple snail monitoring contract with Dr. Phil Darby from University of West Florida. Dr. Darby, however, will no longer be able to perform the apple snail monitoring and, therefore, the Corps is currently exploring procurement opportunities and will work with FWS to refine a new scope of work for the requisite apple snail monitoring.

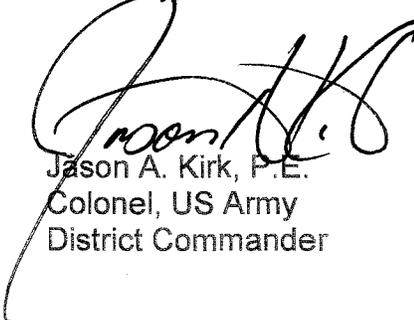
Adaptive Management. Finally, the Corps agrees with the Service that the BiOp RPA hinges upon a commitment to adaptive management. As outlined in Section 7.1.3(4), the BiOp's envisioned adaptive management process would serve as a way to keep the RPA on track to achieve its objectives while flexibly responding to new information.

One attribute of this process would be to ensure that potential post-BiOp changes in Corps operations that may be necessary at a later date, and which are determined as unlikely to cause effects on the CSSS, wood stork, or snail kite different from or additional to those already considered in the BiOp, would not necessarily require a reinitiation of consultation for our agencies to address. In the interests of enabling this process, the Corps will identify senior management to meet twice annually as discussed in the RPA, and will assign staff to the RPA's Interagency Coordination Team (ICT) to evaluate progress toward meeting the Service's habitat performance targets.

As the BiOp acknowledges, implementing each of the actions of the RPA "is subject to various contingencies, including real estate acquisitions by DOI and the Corps, timely completion of several ongoing and planned construction projects, and complying with NEPA, some of which the Corps does not control (e.g., non-Corps land acquisition, tribal consultation, state CZMA evaluation)." The RPA actions are also subject "to the administrative and Congressional budget process, appropriations, the Federal Acquisition Regulations and Competition in Contracting Act, and the actions of third parties, which may delay or otherwise require changes to their execution." The Corps commits to coordinate with the FWS as these contingencies are addressed and resolved in accordance with law. If, at a later date, processes such as NEPA result in any preferred alternative actions that may affect the CSSS in a manner or to an extent not considered in the BiOp, the Corps will reinitiate formal consultation.

Thank you for consulting with us during the preparation of the BiOp. We look forward to working with you and your staff to meet our ESA obligations while taking specific steps to implement the BiOp's RPA. It remains the intent of the Corps to ensure that its ERTTP actions are based upon the best scientific and engineering information available.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason A. Kirk". The signature is stylized and overlaps the printed name below it.

Jason A. Kirk, P.E.
Colonel, US Army
District Commander

cc:

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Ms. Shannon Estenoz, Director, U.S. Department of the Interior, Office of Everglades
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