

**Cooperative Agreement for Conservation of the Florida Manatee  
Between the  
Corps of Engineers, Jacksonville District  
And  
U.S. Fish and Wildlife Service**

**Purpose of the Cooperative Agreement**

In conjunction with construction and operation of Congressionally- authorized civil works projects, facilitate compliance with federal laws protecting the Florida manatee (*Trichechus manatus latirostris*), specifically the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 *et seq.*).

**Background**

The Florida manatee is a marine mammal protected under provisions of both the MMPA and ESA. Under the ESA, the species is presently classified as *endangered*. In the context of the MMPA, any endangered or threatened species under the ESA is considered a *depleted species* as well as a *strategic stock*.

Section 7(a)(2) of the ESA requires that each federal agency *insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence* of any endangered or threatened species and section 9 prohibits take, with some exceptions as provided for in section 10.

In regard to the MMPA, Title I establishes a moratorium on the taking of marine mammals, subject to specific permitting requirements. Under section 101(a)(5)(A), incidental take permits for a depleted species are limited to takings of *small numbers* that would have a *negligible impact* on the species or stock.

Given that the ESA and MMPA provide avenues for authorizing a limited amount of take, the U.S. Fish and Wildlife Service (Service) previously proposed take regulations for the Florida manatee under the MMPA on November 14, 2002 (67 FR 69078). However, on May 8, 2003 (68 FR 24700), the Service found that take could not be authorized at that time due to uncertainties that take would be more than negligible. Despite continued improvement in the Florida manatee population, the baseline level of incidental take from human sources effectively precludes any future take authorizations under the MMPA as long as the manatee is a depleted species. ESA consultations are also influenced by the take standards under the MMPA. Section 17 of the ESA establishes that no provision of the *ESA shall take precedence over any more restrictive conflicting provision* of the MMPA. Thus, the incidental taking of one or more Florida manatees cannot be authorized without a companion authorization under the MMPA.

The strict take provision of the MMPA and the ESA requirement to comply with the MMPA standard may preclude the ability of the Service to complete the ESA consultation process. Likewise, the strict requirements for MMPA permitting process would likely preclude the issuance of a take permit given the extent of certain civil works projects involving, locks, dams, dredging, and even ecosystem restoration in manatee habitat.

### **Parties**

U.S. Army Corps of Engineers, Jacksonville District,

U.S. Fish and Wildlife Service, North Florida Ecological Services Field Office

U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office

U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office

### **Legal Authorities**

Section 112(c) of the MMPA provides that *the Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title [Title I] or title IV and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.*

### **Geographic Scope**

This Cooperative Agreement (Agreement) applies to the U.S. Army Corps of Engineers, Jacksonville District (Corps) civil works activities carried out in the State of Florida.

### **Agreements**

The Corps and the Service (also referred to as the “Parties”) agree to the following steps and procedures to serve and safeguard the public interest in civil works and improve conservation of the Florida manatee:

The Corps agrees to utilize the best available technology and other measures and procedures to avoid and minimize negative impacts to the Florida manatee to the extent practicable, and employ onsite and/or offsite compensatory measures to achieve no net negative impact to the species at the population level.

The Service agrees that when civil works activities meet the criteria as outlined above that such activities would result in an insignificant and/or discountable level of take for the Florida manatee in the context of the ESA and will not be subject to additional *formal* consultation beyond that associated with this Agreement.

## Procedures

The Parties jointly agree to the following concurrence procedures to carry out the provisions of this agreement and satisfy the ESA requirement for concurrence with activities not likely to affect listed species:

In activities where the Corps preliminary evaluation finds that certain civil work activities are reasonably certain to result in incidental take, e.g., injury, death, or disruption of behavioral patterns, of one or more manatees, the Corps will develop avoidance, minimization, and/or compensatory measures necessary to meet the criteria outlined under the *Agreements* section of this document. The Corps will then submit a Request for Concurrence (RC) for the proposed work activities to the appropriate Service field office. Concurrence may be obtained for individual actions, similar categories of actions, or programs.

RC's should contain (or append) the following information:

- description of the activity(ies);
- location of the activity(ies);
- extent and location(s) of manatee use;
- extent of potential take from direct, indirect and cumulative effects of the activity(ies);
- proposed avoidance, minimization and/or compensation measures; and
- evaluation of the likelihood of the effectiveness of these measures.

The Service shall respond within 60 days of receipt of any RC. Incomplete requests may be returned within 15 days of receipt of the RC for re-submission with a list of the additional information required for consideration. If the Service does not concur with a request, it must provide its rationale for determining why the proposed measures fail to meet the purpose of this agreement.

In the case of disputes, the Corps may elevate the issue to the Service's Regional Director for resolution. The decision of the Regional Director is final. Alternatively, the Corps may always request authorization for take under the MMPA.

The Parties agree to work informally both prior to the submission of the RC and during the assessment of the RC to facilitate and expedite review, response, and resolution of any issues.

The Parties agree to develop standardized avoidance, minimization, and compensation measures whenever possible to facilitate the concurrence process.

### **Incidental Take**

This agreement does not authorize the take of Florida manatees. Should incidental taking of one or more manatees occur as a result of an action upon which the Service has concurred, the specific activity shall cease until the Parties jointly and cooperatively investigate the circumstances and make every effort to remedy the issue through avoidance, minimization, and/or compensatory measures.

Incidental taking which occurs as a result of failure to implement avoidance and minimization measures or through negligence may be subject to investigation and action by the Service’s Office of Law Enforcement, in accordance with Section 9 of the ESA and section 102 of the MMPA.

### **Other Provisions**

1. This agreement may be voided by either signatory with 60 days written notice, or immediately if it is rendered moot by authorization(s) for incidental take or issuance of regulations.
2. This agreement may be revised upon consent of all Parties.
3. With consent of all Parties, appendices may be attached to this agreement, as appropriate, to carry out the purpose and terms of this agreement. Such appendices may include, but not be limited to, internal project review key(s), decision tree(s), lists of potential avoidance, minimization, compensation measures, etc.

### **Signatories**

[signed 19 December 2012]

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ALAN M. DODD Date  
Colonel, Corps of Engineers  
Commanding  
Jacksonville District

[signed 27 November 2012]

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DAVID L. HANKLA Date  
Field Supervisor  
U.S. Fish and Wildlife Service  
North Florida Field Office

### **Concurrences**

[signed 27 November 2012]

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LARRY WILLIAMS Date  
Field Supervisor  
U.S. Fish and Wildlife Service  
South Florida Field Office

[signed 27 November 2012]

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DONALD IMM Date  
Field Supervisor  
U.S. Fish and Wildlife Service  
Panama City Field Office