



IN REPLY REFER TO:

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Field Office  
1601 Balboa Avenue  
Panama City, FL 32405-3721

Tel: (850) 769-0552

Fax: (850) 763-2177

May 10, 2011

Colonel Alfred A. Pantano, District Engineer  
U.S. Army Corps of Engineers  
Jacksonville District Corps of Engineers  
1002 West 23<sup>rd</sup> Street, Suite 350  
Panama City, Florida 32405-3648

Attn: Mr. Don Hambrick

Re: FWS #: 2010-CPA-0235  
Regional General Permit (RGP) SAJ-105  
Corps Concurrence Request

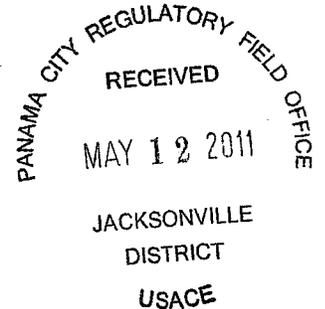
Dear Colonel Pantano:

The United States Fish and Wildlife Service (Service), is responding to the Department of the Army, Corps of Engineers' (Corp) April 20, 2011 (received on April 25, 2011) request for written concurrence on their "no effect" and "may affect - not likely to adversely affect" determinations for federally listed, proposed and/or candidate species within the action area of their proposed RGP SAJ-105. Our response is provided in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.)

### **Description of the proposed action:**

Within the framework of informal consultation the *Biological Assessment (BA)* for the *Proposed Regional General Permit (RGP) and Ecosystem Management Agreement (EMA) II Project, Bay County, Florida, April 20, 2011* as prepared by Florida Environmental & Land Service, Inc. for the Corps has provided the Service with a comprehensive document to consider during our informal consultation with the Corps relating to the proposed RGP SAJ-105. The following is a partial list of information contained in the submitted BA: Proposed Action, Project and Action Areas, Status of the Species and Critical Habitat, Conservation Units, Stormwater Management/Sediment and Erosion Control Measures, Analysis of Effects of the Action, Existing Environment, Cumulative Effects, and Alternatives.

Voluntary conservation measure offered by St. Joe Company shall become part of the RGP SAJ-105 requirements and will specifically address the Bald eagle (*Haliaeetus leucocephalus*),



Eastern indigo snake (*Drymarchon corais couperi*), Reticulated flatwoods salamander (*Ambystoma bishopi*), and circumstances that will require initiation of formal consultation.

**Initiation of formal consultation shall be required for any RGP SAJ-105 permitted action(s):**

- 1) That incidentally take any listed, proposed, or candidate species,
- 2) If new information reveals that the RGP SAJ-105 permitted actions "may affect" listed species or critical habitat in a manner or to an extent not considered under informal consultation,
- 3) If the proposed RGP SAJ-105 permitted action is later modified in a manner that causes an effect on listed species or critical habitat not considered under this informal consultation,
- 4) If new species are listed or critical habitat is designated, which have not been considered under this informal response letter, and may be affected by Corps RGP SAJ-105 permitted activities.

While candidate species have no legal protection, the Service has notified the Corps of candidate mussel species in the action area, and recommended ways to reduce the potential for adverse effects. The Corps and the St. Joe Company have offered to incorporate the Service's recommendations as requirements into the RGP SAJ-105 permit. **Note:** Type 1 Conservation Unit protection will be provided for all feeder streams leading to Little Crooked Creek/Pine Log Creek within the RGP SAJ-105 permit boundaries.

Based on the information provided in the Corps request for concurrence letter, BA, interagency review meetings, discussions, studies and surveys; we concur with the Corps' determinations of "no effect" and "may affect, but would not likely adversely affect" for federally listed species within the RGP SAJ-105 action area.

For the following reasons, we recommend that you reconsider your "no effect" determination for the following list of candidate mussel species: Choctaw Bean (*Villosa choctawensis*), Fuzzy Pigtoe (*Pleurobema strodeanum*), Gulf Moccasinshell (*Medionidus penicillatus*), Oval Pigtoe Mussel (*Pleurobema pyriforme*), Southern Kidneyshell (*Ptychobranchus jonesi*), Southern Sandshell (*Hamiota australis*), and Tapered Pigtoe (*Fusconaia burkei*):

1. Recent surveys have found *Fusconaia burkei* in Pine Log Creek two miles closer to Little Crooked Creek than previously identified. *Fusconaia burkei* has now been found 2.5 miles below the mouth of where Little Crooked Creek enters Pine Log Creek and 0.5 miles above the point of entry of Little Crooked Creek into Pine Log Creek.
2. There is the potential for all the above candidate mussel species and their critical habitat to be proposed for listing in Pine Log Creek where Little Crooked Creek enters that tributary.
3. Based on Type 1 Conservation Unit protection being provided for all feeder streams leading to Little Crooked Creek/Pine Log Creek within the RGP SAJ-105 permit

boundaries, the Service may be able to concur with a "may affect, but would not likely adversely affect" for the above listed candidate mussel species.

As stated in the RGP SAJ-105, due to the potential for unknown impacts that may occur from the following uses, activities and facilities that will be allowed within Type 1 Conservation Units, we must give the benefit of the doubt to the species:

- i. Wetland and upland habitat enhancement and restoration.
- ii. Forest management, which shall be conducted through sustainable forestry, uneven age management regimes and best management practices, in accordance with, and as defined in the Principles for Forest and Wildlife Management of Conservation Units within the West Bay Ecosystem Management Agreement and RGP SAJ-105 ("Forest and Wildlife Management Plan"). No timbering of cypress or wetland hardwoods or clear cutting is permitted except as allowed in the Forest and Wildlife Management Plan.
- iii. Passive recreational facilities such as hiking and biking trails, boardwalks, gathering shelters, restrooms, camping platforms, horseback trails and hitching areas, and other facilities of a similar nature. These facilities shall result in no more than minimal impacts. Trails and boardwalks may cross wetlands, but must be minimized to the maximum extent practicable. All other facilities may only be located in uplands.
- iv. Wetland mitigation as required by any future permit.
- v. Reinstitution of fire regime, including necessary firebreaks, which mimics natural conditions.
- vi. Linear utilities and infrastructure facilities, which shall be defined as (i) electric transmission, collection and/or distribution lines, (ii) water transmission, collection and/or distribution lines, (iii) sewer transmission, collection and/or distribution lines, (iv) natural gas transmission, collection and/or distribution lines, (v) data and/or telecommunications transmission, collection and/or distribution lines (phone, cable, fiber optics, internet), and (vi) stormwater conveyances, but not stormwater ponds. In addition, ancillary facilities that are part of and support the linear utilities and infrastructure facilities described above shall be allowed. All linear utilities and infrastructure facilities shall, when practical, be co-located with road crossings and be installed by direct bore methods. The linear infrastructure shall be subject to the criteria and wetland impact limitations as set forth in special condition 5.c of the RGP SAJ-105.
- vii. Activities needed to maintain, in current condition, existing access, roads and ditches within and through the Conservation Units. These allowable

maintenance activities do not include activities to relocate such access, roads and ditches.

- viii. Nature centers, including single access roads. A Leadership in Energy and Environmental Design (LEED) certification of silver or higher must be obtained for any enclosed structures. Nature centers may only be located in uplands. Access roads to serve nature centers must comply with special condition 5.c and 12.e (1) of the RGP SAJ-105.

**Cumulative Effects:**

Within the context of the informal consultation under the Endangered Species Act Section 7, cumulative effects have been addressed within the *Biological Assessment for the Proposed Regional General Permit and Ecosystem Management Agreement (EMA) II Project, Bay County, Florida*.

As discussed with you today; (Ref.: April 12, 2011 Draft Interagency Team Notes) if FDOT road widening was not included in original BA, the BA will need another revision in order to account for FDOT cumulative impacts.

Thank you for providing the Service with the opportunity to comment on your RGP SAJ-105 BA. If you have any questions or need additional information, please contact Mr. Ted Martin at 850-769-0552 (ext. 239). Please refer to the reference number located at the top of this letter in future phone calls or written correspondence.

Sincerely,



Dr. Donald W. Imm  
Project Leader

cc.

Jon Hemming  
Andrew Kizlauskas – PS Corps