

**Perdido River Land Conservation and Habitat Enhancements Program
Environmental Compliance Addendum - Molpus Tracts
May 2023**

RE: [External Email]Re: [EXTERNAL] Environmental Compliance assistance for FPL 3a Perdido project

1 message

Battle, Benjamin - FS, AL <benjamin.battle@usda.gov>
To: Heather Young <heather.young@restorethegulf.gov>
Cc: "Howard, Ron - FPAC-NRCS, MS" <ron.howard@usda.gov>

Wed, Apr 12, 2023 at 4:18 PM

Hi Heather,

Hope all is well. Please see USDA's response below and let me know if there's anything else we can assist with.

Expanded authorization for Alabama Department of Conservation and Natural Resources purchase of lands in the Perdido watershed

Activities proposed for funding by the Gulf Coast Ecosystem Restoration Council are subject to federal procedures for public involvement and disclosure of potential effects to resources under the National Environmental Policy Act (NEPA). In January 2020, USDA determined that federal funding for proposed purchase of lands in the Perdido watershed by the State of Alabama, Alabama Department of Conservation and Natural Resources (ACDNR), would not result in significant effects to the environment. Because no extraordinary circumstances were found in the resource analysis, USDA authorized the proposed activities under a category of activities that the USDA Forest Service excludes from more detailed NEPA analysis ("Acquisition of land or interest in land" 36 CFR 220.6(d)(6)).

In March 2023, The RESTORE Council requested expanded authority to purchase additional tracts in the watershed that were not specified in the original decision. USDA has determined that acquiring the proposed Molpus parcels is consistent with the purpose of the proposal and that there are no resource concerns that were not already reviewed in the original documentation.

The description of public involvement from the 2020 authorization demonstrates that the entire project has met NEPA requirements for project scoping and that the proposed action included maps showing all the Perdido watershed. Additionally, the description of the proposed action in the FPL 3a document specifically includes a provision for "**other suitable parcels**" in addition to the Magnolia tract that was the focus of the initial land acquisition.

Analysis in the 2020 authorization remains valid for all potential extraordinary circumstances, and the addition to the proposed action of other parcels within the Perdido watershed is within the scope of previously disclosed effects. However, as described in the previous documentation, this authorization applies only to the acquisition of land or interests in land; future activities on those lands may be subject to additional environmental review for protected resources. Additionally, any new information or changed circumstances for the Magnolia, Molpus or other tracts may require review to ensure that activities are within the scope of previously disclosed environmental effects and authorized actions.

USDA is pleased to continue to support the Perdido Land Conservation and Habitat Enhancements project. If you have any questions, please contact Ben Battle at benjamin.battle@usda.gov or 601-723-1155.

Respectfully,

Ben



Benjamin Battle
Gulf of Mexico Forest Restoration Program Manager

UNITED STATES FISH AND WILDLIFE SERVICE ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the following proposed action is categorically excluded from NEPA documentation requirements consistent with 43 CFR 46.210, FWS 516 DM 8.5.

Regulatory Framework

Federal agencies are required to develop procedures for implementing the National Environmental Policy Act (NEPA) to supplement those established by the CEQ at 40 CFR 1500-1508. The Gulf Coast Ecosystem Restoration Council (Council) finalized NEPA procedures on May 5, 2015 (80 FR 86, 25680-25691). These procedures are applicable to all Council Actions, including approving and funding projects that were proposed by and otherwise will be implemented by non-federal parties (40 CFR 1508.18). The Council determined that certain categories of activities that have not undergone NEPA review may be categorically excluded from detailed documentation in an EA or EIS (Sec. 4(c,d)), subject to a review of extraordinary circumstances that could indicate potentially significant effects on the environment (Sec. 4(e)). Further, the Council may adopt a categorical exclusion established by another Federal agency Council member involved in the Council action, subject to documentation procedures (Sec. 4(f)). In this case, the State of Alabama -Alabama Department of Conservation and Natural Resources (ADCNR), is partnering with the U.S. Fish and Wildlife Service (FWS)—as a bureau of the Department of the Interior—to determine if specific management activities proposed for the Perdido River Land Conservation and Habitat Enhancement Project (see below) are suitable for the Council to adopt the FWS categorical exclusion(s).

Proposed Action and Alternatives. Describe the proposed action and any alternatives explored. Discuss briefly why proposed action was selected over other alternatives.

The Perdido River Land Conservation and Habitat Enhancement Project seeks to utilize RESTORE Act funds to increase habitat connectivity and quality, enhance recreational access, and increase acreage of land under conservation protection in coastal Alabama. The proposed project contributes toward the Council's Comprehensive Plan goal to Restore and Conserve Habitat as implementation will result in the placement of habitat into conservation (eliminating potential for future development). Through this project one property, known as Magnolia South, has already been acquired. The property currently being proposed for acquisition and management, known as the Molpus Tracts, is in the Perdido Watershed located in Baldwin County, Alabama, and will be acquired through fee simple acquisition. Management activities will contribute to the Council's goal of Replenishing and Protecting Living Coastal and Marine Resources through activities such as planting of native species and the enhancement of habitats to support native flora such as the longleaf pine (*Pinus palustris*) and fauna such as the gopher tortoise (*Gopherus polyphemus*), a keystone species in the longleaf ecosystem. Upon acquisition, the ADCNR would conduct habitat management and stewardship on the tract, which could include prescribed burning, invasive species removal, longleaf pine restoration, and protection and habitat enhancements for species including the gopher tortoise. Acquired land would become part of the Perdido Wildlife Management Area and be accessible to the public for recreational use. Timeline for completion is estimated to be up to ten years total. Acquisition activities would be complete by the end of Year 2, with immediate management activities taking place upon completion of acquisition. The management plan would be completed in Year 2 and habitat restoration, enhancement and management activities would proceed in years 3-10.

The ADCNR contemplates several activities under this project: Activities 1 and 2 include acquiring the Molpus Tracts and developing a management plan for acquired lands, respectively. Specific management activities include: Activity 3 - protection of boundaries, marking property lines, and installation of security gates. Activity 4 - Habitat enhancement and/or restoration activities includes: (a) Select, minimal thinning of existing forested areas to facilitate future management and restoration actions; (b) Conduct minimal hydrologic restoration activities to include the mitigation of impacts of ditches and/or roads that are

interrupting sheet flow; (c) Prescribed burning and preparation of sites for burning, which could include vegetation management activities to reduce fuel load; (d) Invasive species removal; (e) Planting of native species including longleaf pine and groundcover species; (f) Implementation of management activities for priority species, including longleaf pine and gopher tortoise. Activity 5 incorporates an education and outreach component and Activity 6 includes identifying and prioritizing (in coordination with watershed stakeholders and entities) additional projects in the Perdido Watershed for funding in future FPLs that could further enhance habitat connectivity, improve water quality and/or facilitate the development of the assessment of restoration progress in the watershed.

I) Proposed Action(s): Management Activity 3 – Protection of boundaries

CE - 516 DM 8.5 (B)(3) - *The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or minor changes in the use of the affected local area.*

Determination: For Management Activity #3, the delineation of property boundaries with fences and installing security gates are small structures that will protect proposed habitat restoration work. All of these minor activities are consistent with FWS CE 516 DM 8.5 (B)(3) and the proposed action does not trigger an Exception to the Categorical Exclusions at 516 DM 2 Appendix 2.

II) Proposed Action: Management Activity 4(c) – Prescribed burning

CE - 516 DM 8.5 (B)(4) - *The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and state ordinances and laws.*

Determination: The prescribed burning, and vegetation management preceding it, is for the purpose of achieving habitat restoration goals. If the understory is particularly thick, the site will likely need to be managed to thin out the vegetation (via mechanical removal or other methods) in order for the burn to proceed successfully and not scorch non-targeted areas due to a heavy fuel load. Habitat restoration in this area will require both site-work to prep the area for burning and then prescribed burning at regular intervals to achieve the habitat objectives for restoration. The prescribed burning for habitat restoration is consistent with the use of FWS CE 516 DM 8.5 (B)(4) and the proposed action does not trigger an Exception to the Categorical Exclusions at 516 DM 2 Appendix 2.

III) Proposed Action: Management Activity 4(e) – Planting of native species

CE - 516 DM 8.5 (B)(6) - *The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic range or established range where no or negligible environmental disturbances are anticipated.*

Determination: Management activities, such as planting native long leaf pine, and other native ground cover species are key components for landscape restoration efforts. The planting of native species for habitat restoration will result in negligible ground disturbance and is consistent with the use of FWS CE 516 OM 8.5 (B)(6). This proposed action does not trigger an Exception to the Categorical Exclusions at 516 DM 2 Appendix 2.

Permits/Approvals. *Discuss any additional permits/approvals needed before the proposed action can be implemented, such as a Clean Water Act section 404 permit, Endangered Species Act section 7 consultation, and/or National Historic Preservation Act section 106 clearance.*

This project will be implemented by the State of Alabama - ADCNR. Through the RESTORE Council's Funded Priorities List collaborative planning process, Alabama has identified an opportunity for a large-scale, multimember, coordinated program in the Perdido Watershed. The States of Alabama and Florida both share the watershed with the Perdido River as a border. Habitat conservation work benefits both states and provides future opportunities for additional collaboration with potential projects such as the expansion of the Perdido Canoe Trail and additional water quality and habitat restoration activities

throughout the watershed. The State of Alabama, via the Mobile Bay National Estuary Program, has funded the development of a Perdido watershed management plan. The Pensacola and Perdido Bay Estuary program in Florida will also work to identify priority conservation activities in the watershed. This proposed project supports existing conservation efforts and can anchor future projects throughout the watershed.

Regulatory compliance work has been completed. A section 404 Clean Water Act permit is not required. Endangered Species Act section 7 consultation has been completed and there are no expected concerns related to Fish and Wildlife Service trust resources from project implementation. Review of the Alabama Register of Landmarks and Heritage did not show any listing at or near the proposed acquisition area. There are also no listings on the National Register of Historic places at or near the proposed acquisition location. The proposed acquisition would not impact American Indians religious or cultural sites or archaeological sites. Additional coordination with the Alabama Historical Commission will be conducted as the project progresses for management actions. This proposal would require no additional federal permitting. No state permits will be needed with the exception of a prescribed burn permit from the Alabama Forestry Commission, which will be obtained when more details on the timing and acreage for the burns is determined. This is a routine, standard process for ADCNR.

Public Involvement/Interagency Coordination. *Discuss the opportunities provided to the public, other agencies, and/or Tribes to get involved with the proposed action, any significant comments they may have made, and our responses.*

The RESTORE ACT was signed into law October 5, 2010, as Executive Order 13554 and published in the Federal Register. In accordance with the law, The RESTORE ACT Council manages a public involvement process in order to generate input from local stakeholders, communities, public officials, and other members of the public throughout the Gulf region. Widespread efforts have been made to ensure that these members of the public have had ample opportunity to share their views. The Council has hosted many public meetings and established an internet presence to accept public comments.

Public comments received at the Alabama Restoration Summit (November 2018) as well as public meetings for the Council framework indicated broad support for work in the Perdido watershed. A September 2019 NRDA public meeting in Alabama featured the Molpus Tract proposed acquisition in the Perdido Watershed, and public support for that project and projects in the watershed more generally received positive comments. The RESTORE Council intends to publish a draft Funded Priorities List 3a of projects in the Federal Register soliciting public comments in January 2020. The appropriate weblinks to those documents would be available on the Council's website (<https://www.restorethegulf.gov>).

Supporting Documents. Supporting documents for this determination include relevant office file material and the following key references: *(List document citations here)*

- (1) The RESTORE Council website FPL 3a Proposal:
https://www.restorethegulf.gov/sites/default/files/AL_FPL3a_RevisedProposal_20191115_508.pdf
- (2) Perdido Watershed Management Area:
<https://www.alabamaforeverwild.com/perdido-river-wma-spotlight>
- (3) Alabama Department of Conservation (ADCNR). 2012. Alabama Forever Wild Land Trust Management Plan. Available at:
http://conservationqis.a/abama.gov/Documents/ManagementPlans/FW48_Perdido.pdf
- (4) Gulf Restoration Ecosystem Restoration Council NEPA implementing procedures:
<https://www.restorethegulf.gov/sites/default/files/documents/pdf/Gulf%20Coast%20Ecosystem%20Restoration%20Council%20NEPA%20Procedures.pdf>
- (5) BE Form (and attached Cooperative Agreement) documenting the environmental compliance review.

Check One:

is a categorical exclusion as provided by 516 DM 8.5. No further NEPA documentation will therefore be made.

_____ is found not to have significant environmental effects as determined by the attached environmental assessment and finding of no significant impact.

_____ is found to have significant effects and, therefore, further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

See attached early restoration plan and associated maps for the Perdido River Land Conservation Project.

Signature Approval:



Gulf Restoration Office
Compliance Supervisor

5/5/2023
Date

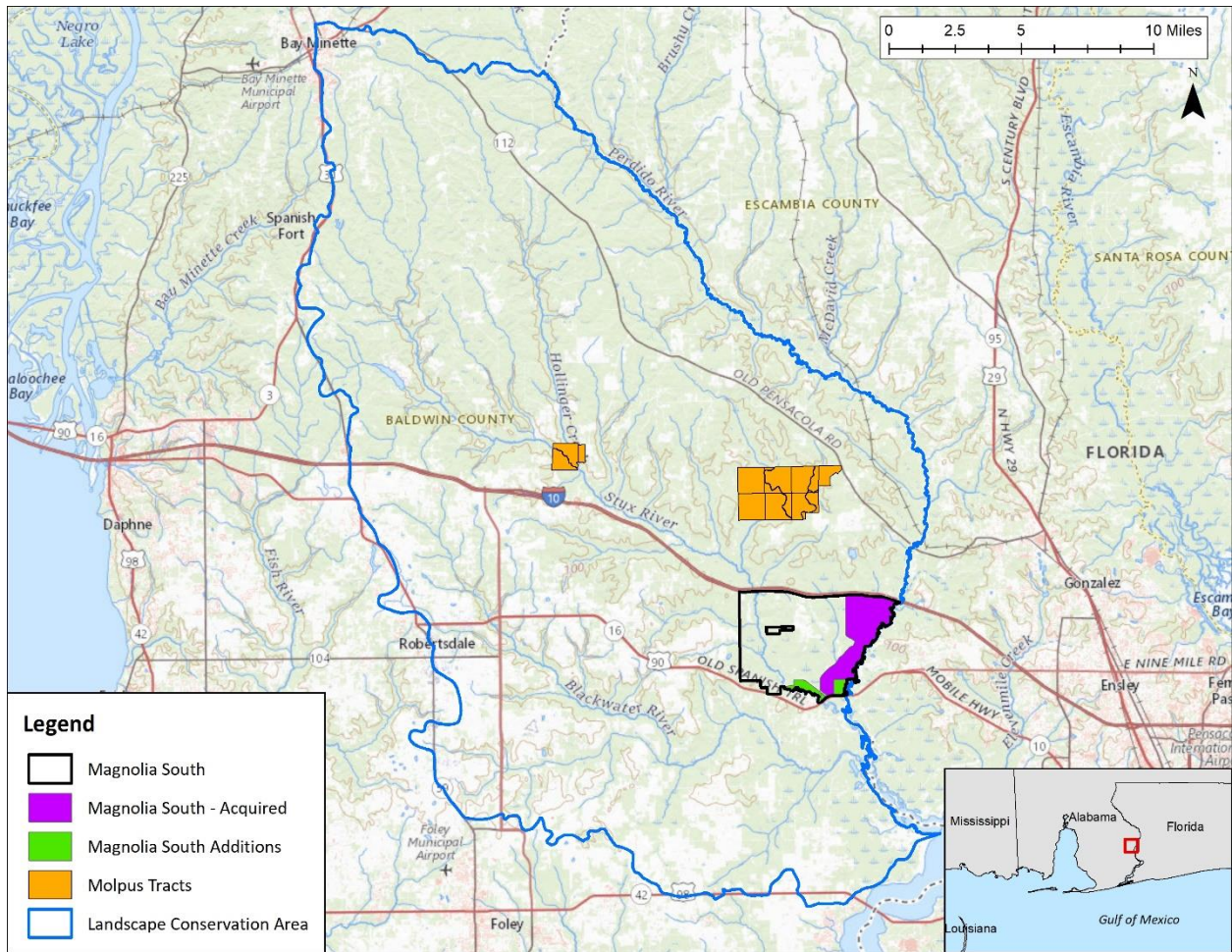


Figure 1. The Project area, eastern Baldwin County, Alabama, including past and present acquisitions.

NEPA Extraordinary Circumstances
Checklist

A. Project Information

Project Name: Perdido River Land Conservation and Habitat Enhancements – Molpus Tracts
Project Sponsor: State of Alabama
Project Location: Baldwin County, Alabama

B. This proposal X is is not completely covered by categorical exclusion(s) in DOI regulations at 43 CFR and/or FWS 516 DM 8.5.

C. Extraordinary Circumstances:

Will This Proposal (check one for each item below):

Yes No

- | | |
|--------------|--|
| <u> X </u> | 1. Have significant adverse effects on public health or safety. |
| <u> X </u> | 2. Have significant adverse effects on such natural resource and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds, and other ecologically significant or critical areas under Federal ownership or jurisdiction. |
| <u> X </u> | 3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2) (E)]. |
| <u> X </u> | 4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. |
| <u> X </u> | 5. Have a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. |
| <u> X </u> | 6. Have a direct relationship to other actions with individually Insignificant but cumulatively significant environmental effects. |
| <u> X </u> | 7. Have significant adverse effects on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau office, the State Historic Preservation Officer, the Advisory Council on Historic Preservation, or a consulting party under 36 CFR 800. |
| <u> X </u> | 8. Have significant adverse on species listed, or proposed to be listed, on the List or Endangered or Threatened species, or have significant adverse effects on designated Critical Habitat for these species. |
| <u> X </u> | 9. Have the possibility of violating a Federal law, or a State, local, or tribal law or requirement imposed for the protection or the environment. |
| <u> X </u> | 10. Have the possibility for disproportionately high and adverse effect on low income or minority populations (EO 13007). |
| <u> X </u> | 11. Have the possibility to limit access to and ceremonial use or Indian sacred sites on Federal lands by Indian Religious practitioners or significantly adversely affect the physical Integrity or such sacred sites (EO 13007). |
| <u> X </u> | 12. Have the possibility to significantly contribute to the introduction, continued existence, or spread or noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion or the range or such species (Federal Noxious Weed Control Act and EO 13112). |

(If included, attach any additional Information or documentation supporting the Checklist.)

NEPA Extraordinary Circumstances
Checklist

(If any of the above extraordinary circumstances receive a "Yes" check, an Environmental Assessment must be prepared.)

- D. Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established an administrative record and have determined that the proposal:

X is a categorical exclusion as provided by DOI regulations at 43 CFR 46.210, FWS 516 DM 2 and/or FWS 516 DM 8.5. No further NEPA documentation will therefore be made.

Category: 516 DM 8.5(A)(4) and (B)(3-6).

___ is not completely covered by the categorical exclusion as provided by DOI regulations at 43 CFR 46.210, FWS 516 DM 2, and/or FWS 516 DM 8.5. An Environmental Assessment must be prepared.

U.S. Fish and Wildlife Signature Approval

AMY MATHIS

Digitally signed by AMY
MATHIS
Date: 2023.04.21 17:19:12
-05'00'

Staff Preparer

Date



Authorizing Official

5/5/23
Date

Biological Evaluation Form

Gulf Coast Ecosystem Restoration Council (RESTORE Council)

This form will be filled out by the Implementing Council Member and used by the regulatory agencies. The form will provide information to initiate informal Section 7 consultations under the Endangered Species Act (ESA) and may be used to document a No Effect determination or to initiate pre-consultation technical assistance.

It is recommended that this form also be completed to inform and evaluate additional needs for compliance with the following authorities: Migratory Bird Treaty Act (MBTA), Marine Mammal Protection Act (MMPA), Coastal Barrier Resources Act (CBRA), and the Bald and Golden Eagle Protection Act (BGEPA).

Further information may be required beyond what is captured on this form. Note: if you need additional space for writing, please attach pages as needed.

For assistance, please contact the compliance liaisons
USFWS: Ben Frater at benjamin_frater@fws.gov
NMFS: Mike Tucker at michael.tucker@noaa.gov

A. Project Identification

Federal Action Agency (one or more): USFWS NOAA EPA USDA Other: **RESTORE Council**

Implementing Council Member (s): Alabama Department of Conservation and Natural Resources

Contact Name: Amy Hunter Phone: Email: Amy.Hunter@dcnr.alabama.gov

Project Name: The Perdido River Land Conservation and Habitat Enhancement Project - Molpus Tracts

B. Project Phase

Please choose the box which best describes the project status, as proposed in this BE form, check ALL that apply:

Construction/Implementation Planning/Conceptual Engineering & Design

If "Engineering & Design" was selected, please describe the level of design that has been completed and is available for review:

[Click here to enter text.](#)

C. Project Location

I. State and County/Parish of action area

Baldwin County, Alabama.

II. Latitude/Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83]
[online conversion: <https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees>]

See Map

III. Maps, Drawings, and GIS Data

Please insert any maps, aerial photographs, or design drawings here or attach to the end of this BE form. GIS files may be emailed with the BE Form to contacts listed on Page 15.

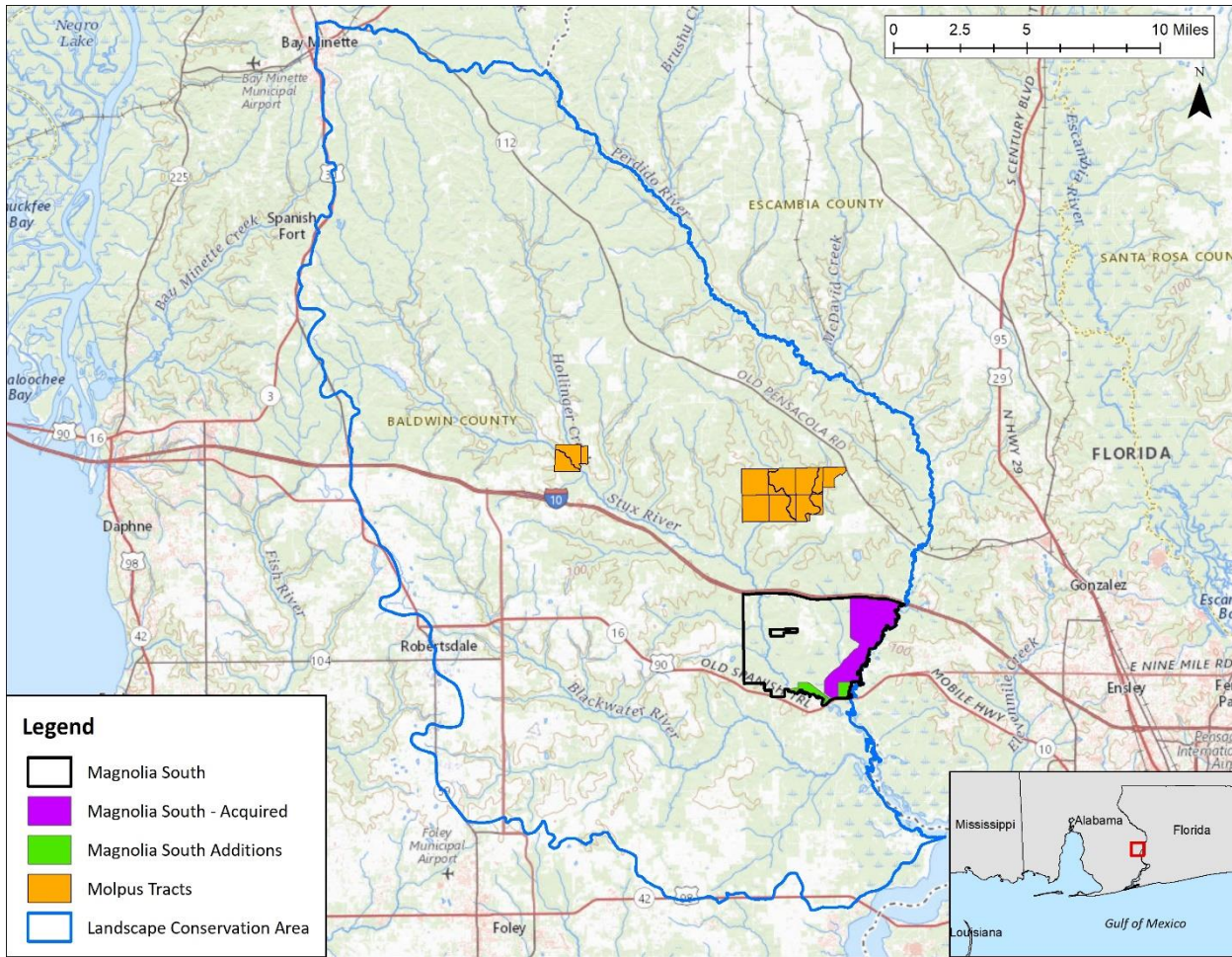


Figure 1. The Project area, eastern Baldwin County, Alabama, including past and present acquisitions.

D. Existing Compliance Documentation

NEPA Documents

Are there any **existing** draft or final NEPA analyses that cover all or part of this project?

YES

NO

FWS Categorical Exclusion

Permits

Have any federal permits been obtained for this project, if so which ones and what is the permit number(s)?

YES

NO

Permit Number and Type: A Federal Endangered Species Act has been completed for ADCNR under Section 6 of the Act. This would cover management activities if needed.

Have any federal permits been applied for but not yet obtained, if so which ones and what is the permit number(s)?

YES

NO

Permit Number and Type: Click or tap here to enter text.

If yes to any question above, please provide details in the text box (i.e. link to the NEPA document, or name of the document, year, lead federal agency, POC, copy of the permit or permit application, etc.).

Click here to enter text.

Any documentation or information provided will be very helpful in moving your project forward.

Name of Person Completing this Form: Click here to enter text.

Name of Project Lead: Click here to enter text.

Date Form Completed: Click here to enter text.

Date Form Updated: Click here to enter text.

E. Description of Action Area

Provide a description of the existing environment (e.g., topography, vegetation type, soil type, substrate type, water quality, water depth, tidal/riverine/estuarine, hydrology and drainage patterns, current flow and direction), and land uses (e.g., public, residential, commercial, industrial, agricultural). Describe all areas that may be directly or indirectly affected by the action. If critical habitat (CH) is not designated in the area, then describe any suitable habitat in the area.

a. Waterbody & Wetlands

Project is located in the Perdido River watershed. Contains unnamed tributaries and wetlands.

Does the project area include a river or estuary?

YES

NO

If yes, please approximate the navigable distance from the project location to the marine environment.

Click or tap here to enter text.

b. Existing Structures

If applicable. Describe the current and historical structures found in the action area (e.g., buildings, parking lots, docks, seawalls, groynes, jetties, marina). If known, please provide the years of construction.

N/A

c. Seagrasses & Other Marine Vegetation

If applicable. Describe seagrasses found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the seagrasses in the action area.

N/A

d. Mangroves

If applicable. Describe the mangroves found in action area. Indicate the species found (red, black, white), the species area of coverage in square footage and linear footage along project shoreline. Attach a separate map showing the location of the mangroves in the action area.

N/A

e. Corals

If applicable. Describe the corals found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the corals in the action area. Click here to enter text.

N/A

f. Uplands

If applicable. Describe the current terrestrial habitat in which the project is located (e.g. pasture, forest, meadows, beach and dune habitats, etc.).

Forests

g. Soils and Sediments

If applicable. Indicate topography, soil type, substrate type.

Gentle slopes

h. Land Use

If applicable. Indicate existing or previous land use activities (agriculture, dredge disposal, etc).

Timber and recreation

i. Marine Mammals

Please select the following marine mammals that could be present within the project area:

- Dolphins YES NO
- Whales YES NO
- Manatees YES NO

If applicable. Indicate and describe the species found in the action area. Use NMFS' Stock Assessment Reports (SARs) for more information, see <http://www.nmfs.noaa.gov/pr/sars/region.htm>

Click here to enter text.

F. Project Description

I. Describe the Proposed Action/Project Objectives: What are you trying to accomplish and how with this project? Describe in detail the construction equipment and methods** needed; long term vs. short term impacts; duration of short term impacts; dust, erosion, and sedimentation controls; restoration areas; if the project is growth-inducing or facilitates growth; whether the project is part of a larger project or plan; and what permits will need to be obtained.

Attach a separate map showing project footprint, avoidance areas, construction accesses, staging/laydown areas.

**If construction involves overwater structures, pilings and sheetpiles, boat slips, boat ramps, shoreline armoring, dredging, blasting, artificial reefs or fishery activities, list the method here, but complete the next section(s) in detail.

The Perdido River Land Conservation and Habitat Enhancement Project seeks to utilize RESTORE Act funds to increase habitat connectivity and quality, enhance recreational access, and increase acreage of land under conservation protection in coastal Alabama. The proposed project contributes toward the Council's Comprehensive Plan goal to Restore and Conserve Habitat as implementation will result in the placement of habitat into conservation (eliminating potential for future development). Through this project one property, known as Magnolia South, has already been acquired. The property currently being proposed for acquisition and management, known as the Molpus Tracts, is in the Perdido Watershed located in Baldwin County, Alabama, and will be acquired through fee simple acquisition. Management activities will contribute to the Council's goal of Replenishing and Protecting Living Coastal and Marine Resources through activities such as planting of native species and the enhancement of habitats to support native flora such as the longleaf pine (*Pinus palustris*) and fauna such as the gopher tortoise (*Gopherus polyphemus*), a keystone species in the longleaf ecosystem. Upon acquisition, the Alabama Department of Conservation and Natural Resources (ADCNR) would conduct habitat management and stewardship on the tract, which could include prescribed burning, invasive species removal, longleaf pine restoration, and protection and habitat enhancements for species including the gopher tortoise. Acquired land would become part of the Perdido Wildlife Management Area and be accessible to the public for recreational use. Timeline for completion is estimated to be up to ten years total. Acquisition activities would be complete by the end of Year 2, with immediate management activities taking place upon completion of acquisition. The management plan would be completed in Year 2 and habitat restoration, enhancement and management activities would proceed in years 3-10.

The ADCNR contemplates several activities under this project: Activities 1 and 2 include acquiring the Molpus Tracts and developing a management plan for acquired lands, respectively. Specific management activities include: Activity 3 - protection of boundaries, marking property lines, and installation of security gates. Activity 4 - Habitat enhancement and/or restoration activities includes: (a) Select, minimal thinning of existing forested areas to facilitate future management and restoration actions; (b) Conduct minimal hydrologic restoration activities to include the mitigation of impacts of ditches and/or roads that are interrupting sheet flow; (c) Prescribed burning and preparation of sites for burning, which could include vegetation management activities to reduce fuel load; (d) Invasive species removal; (e) Planting of native species including longleaf pine and groundcover species; (f) Implementation of management activities for priority species, including longleaf pine and gopher tortoise. Activity 5 incorporates an education and outreach component and Activity 6 includes identifying and prioritizing (in coordination with watershed stakeholders and entities) additional projects in the Perdido Watershed for funding in future Funded Priorities Lists that could further enhance habitat connectivity, improve water quality and/or facilitate the development of the assessment of restoration progress in the watershed.

II. Construction Schedule (What is the anticipated schedule for major phases of work? Include duration of in-water work.)

Click here to enter text.

III. Specific In-Water and/or Terrestrial Construction Methods

Please check yes or no for the following questions related to in-water work and overwater structures

Does this project include in-water work?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Does this project include terrestrial construction?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Does this project include construction of an overwater structure?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

Will fishing be allowed from this overwater structure?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Will wildlife observation be allowed from this overwater structure?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Will boat docking be allowed from this overwater structure?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

G. USFWS Species and Critical Habitat and Effects Determination Requested

If your project occurs in a location that does not contain any listed USFWS species or designated Critical Habitats, please check the box below. If this box is checked, you may skip Section I and proceed to Section J.

This project occurs in a location that does not contain any listed USFWS species or designated Critical Habitats.

ESA effects have been accounted for under an existing consultation. (See Attached “Cooperative Agreement Between The U.S. Department of the Interior and Alabama Department of Conservation and Natural Resources: Endangered, Threatened, and At-Risk Plants, Fish and Wildlife”)

1. List all species, critical habitat, proposed species and proposed critical habitat **generated by IPaC** that may be found in the action area. For species not included in the drop down menu please add manually to the table. The IPaC website can be found here: <https://ipac.ecosphere.fws.gov/>.

2. Attach a separate map identifying species/critical habitat locations within the action area. For information on species and critical habitat under NMFS jurisdiction, visit: http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/gulf_of_mexico.pdf.

If Gulf sturgeon in riverine/freshwater waters may be affected, include them in the table here. If Gulf Sturgeon in marine waters may be affected include them in the NMFS table above in Section G. If sea turtles on land may be affected include them in the table here. If sea turtles in water may be affected include them in the NMFS table above in Section G.

Species and/or Critical Habitat	CH Unit (if applicable)	Location (Sea turtles and Gulf Sturgeon only)	Determinations (see definitions below)	For “No Effect”, please select justification.

Determination Definitions

Please make the appropriate choice in the drop down menus for both species and designated critical habitat

NE = no effect. This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat.

NLAA = may affect, not likely to adversely affect. This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources. Response requested is concurrence with the not likely to affect determination. This conclusion is appropriate when effects to the species or critical habitat will be wholly beneficial, discountable, or insignificant. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, while discountable effects are those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. If the Services concur in writing with the Action Agency’s determination of “is not likely to adversely affect” listed species or critical habitat, the section 7 consultation process is completed.

LAA = may affect, likely to adversely affect. This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat. Response requested for listed species is formal consultation for action with a likely to adversely affect determination, with a biological opinion as the concluding document. This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but may also cause some adverse effect on individuals of the listed species or segments of the critical habitat, then the determination is "likely to adversely affect." Any LAA determination requires formal section 7 consultation and will require additional information.

H. Effects of the Proposed Project to the Species and Actions to Reduce Impacts

NOTE: Species selected as "No Effect" with justification in tables above do not need to be addressed in Section J.

I. Explain the potential beneficial and adverse effects to each species listed above. Describe what, when, and how the species will be impacted and the likely response to the impact. Be sure to include direct, indirect, and cumulative impacts and where possible, quantify effects.

If species are present (or potentially present) and will not be adversely affected describe your rationale. If species are unlikely to be present in the general area or action area, explain why. This justification provides documentation for your administrative record, avoids the need for additional correspondence regarding the species, and helps expedite review.

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II. Explain the actions to reduce adverse effects to each species listed above. For each species for which impacts were identified, describe any Conservation Measures and/or BMPs that will be implemented to avoid or minimize the impacts. Conservation Measures and/or BMPs are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review. Conservation Measures and/or BMPs are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinitiate this consultation.

I. Bald Eagles

Are bald eagles present in the action area? NO YES

If YES, the following conservation measures should be implemented:

1. If bald eagle breeding or nesting behaviors are observed or a nest is discovered or known, all activities (e.g., walking, camping, clean-up, use of a UTV, ATV, or boat) should avoid the nest by a minimum of 660 feet. If the nest is protected by a vegetated buffer where there is *no* line of sight to the nest, then the minimum avoidance distance is 330 feet. This avoidance distance shall be maintained from the onset of breeding/courtship behaviors until any eggs have hatched and eaglets have fledged (approximately 6 months).
2. If a similar activity (e.g., driving on a roadway) is closer than 660 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
3. If a vegetated buffer is present and there is no line of sight to the nest and a similar activity is closer than 330 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
4. In some instances, activities conducted at a distance greater than 660 feet of a nest may result in disturbance. If an activity appears to cause initial disturbance, the activity shall stop and all individuals and equipment will be moved away until the eagles are no longer displaying disturbance behaviors.

Will you implement the above measures? NO YES

If these measures cannot be implemented, then you must contact the Service’s Migratory Bird Permit Office.

Texas – (505) 248-7882 or by email: permitsR2MB@fws.gov

Louisiana, Mississippi, Alabama, Florida – (404) 679-7070 or by email: permitsR4MB@fws.gov

J. Migratory Bird Treaty Act

In accordance with the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. 703-712), will this project cause the take of any birds covered under this act? NO YES

If YES, please explain and indicate if the pertinent permits will be or have been obtained:

Project proponent will review the appropriate BMPs and CMs found at this website and implement the appropriate measures to the extent practicable:

<https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>

NO YES

If NO, please explain:

Cooperative Agreement Between
The U.S. Department of the Interior and
Alabama Department of Conservation and Natural Resources
Endangered, Threatened, and At-Risk Plants, Fish and Wildlife

This Cooperative Agreement is entered into pursuant to Section 6(c) of the Endangered Species Act of 1973, as amended, 16 U.S.C. Sections 1531-43 (hereinafter referred to as "the Act"), and Code of Alabama 1975 Section 9-2-2(5), between the U.S. Fish and Wildlife Service, U.S. Department of the Interior, and the Alabama Department of Conservation and Natural Resources. Hereinafter, the parties shall be referred to as FWS, and the ADCNR respectively.

WHEREAS, the Congress of the United States has found that there are resident species of plants, fish or wildlife which are in danger of extinction or in danger of extinction in the foreseeable future, and that these species of plants, fish or wildlife are of aesthetic, ecological, educational, scientific, economic, and other value to the Nation and its people;

WHEREAS, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened plants, fish or wildlife depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of plants, fish or wildlife;

WHEREAS, the Congress of the United States has declared that encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in its plants, fish or wildlife;

WHEREAS, the Secretary of the Interior has delegated his responsibilities under the Act to the

Director, FWS; who in turn, has delegated such responsibilities to the respective Regional Directors of the FWS;

WHEREAS, the Southeast Regional Director of the FWS ("Regional Director"), desires to enter into this Cooperative Agreement for the purpose of assisting in the implementation of the State of Alabama's conservation program for endangered, threatened, and at-risk (i.e., petitioned, proposed, and candidate for listing under the Act) plants, fish or wildlife species;

WHEREAS, the State of Alabama acting through the ADCNR to administer its program for the conservation of endangered, threatened, and at-risk plants, fish or wildlife in harmony with the terms and spirit of the Act;

WHEREAS, the parties agree that the programs of the State of Alabama are designated to assist resident endangered, threatened, and at-risk plants, fish or wildlife and that it is the mutual responsibility of the FWS to work in harmony of the common purposes of planning, developing and conducting programs to protect, manage and enhance populations of all resident endangered, threatened, and at-risk plants, fish or wildlife within this State;

WHEREAS, the Regional Director, FWS, has the statutory and administrative responsibility: to establish authorized programs for the conservation of endangered and threatened plants, fish or wildlife; to provide periodic review of the approved State program at no greater than annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of the various States; and to exchange with the ADCNR such biological data or other information which may result in the enhancement of the opportunities for the continued survival of endangered, threatened, and at-risk plants, fish or wildlife;

WHEREAS, the ADCNR has responsibility to conserve endangered, threatened, and at-risk plants, fish or wildlife which are resident in the State of Alabama as defined at 50 CFR Section 81.1(p); and

WHEREAS, the ADCNR (a) has the authority to conserve resident plants, fish or wildlife determined by the State agency or the Secretary to be endangered or threatened; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident plants, fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such a program together with all pertinent details, information and data requested by the Secretary; (c) is authorized to conduct investigations to determine the status and requirements for survival of resident plants, fish or wildlife; (d) has the authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened plants, fish or wildlife; and (e) provides for public participation in the designation or resident plants, fish or wildlife as endangered or threatened;

Now therefore, the parties agree as follows:

1. Cooperative Program

- a. The ADCNR shall carry out the activities identified in its conservation program for the benefit of the endangered, threatened, and at-risk plants, fish or wildlife which are resident in the State of Alabama
- b. The Regional Director, FWS, may agree with the State to provide financial assistance for the implementation of an acceptable project for the conservation of endangered, threatened, and at-risk plants, fish or wildlife. Such financial assistance will require the submission of an Application for Federal Assistance and the successful negotiation of a Project Agreement. These will comply with the Secretary's Rules and Regulations (50 CFR Part 81), and the Federal Aid Manual.
- c. As a part of this cooperative program, the law enforcement authorities of FWS and the State of Alabama shall cooperate in the detection, apprehension, and the prosecution of violators of the Act or State laws which are intended to conserve endangered and threatened plants, fish and wildlife.
- d. As additional species of resident plants, fish or wildlife in the State of Alabama

are listed as endangered, threatened, or at-risk by the State or FWS, the parties agree to cooperate in the development of programs and projects for the benefit of such species.

- e. It is understood that any Federal funding pursuant to Section 6(d) of the Act is contingent on the continued implementation of an adequate and active program for the conservation of federally listed endangered, threatened, and at-risk plants, fish or wildlife which are resident in the State of Alabama as defined at 50 CFR Section 81.1(p). If the program for the conservation of such plants, fish or wildlife is determined by the Regional Director, FWS, to be inadequate, or inactive, this agreement and funding shall be terminated in accordance with Sections 5 and 7 of this agreement.
- f. As part of the consultation process provided for by Section 7 of the Act for the determination of critical habitat for federally listed endangered or threatened plants, fish or wildlife, the parties agree to exchange biological and other data as necessary to facilitate such determination by the Director, FWS.

2. Permits

General Rule

- a. Except as authorized in Subsection 2(b), (c), or (d) of this agreement or pursuant to a special rule in 50 CFR Sections 17.40-48, the ADCNR agrees not to engage in, or issue a permit authorizing, the taking of resident federally listed endangered or threatened plant, fish or wildlife as defined at 50 CFR Section 81.1 (p) without the prior issuance of a permit to the applicant by the Director, FWS.

Endangered Species

- b. Any employee or agent of the ADCNR who is designated by that agency for such purposes, may, when acting in the course of his official duties, take any resident

federally listed endangered plant, fish or wildlife for conservation purposes that are consistent with the purposes of the Act and this Cooperative Agreement, or any Project Agreement attached thereto, provided that such taking is not reasonably anticipated to result in:

- (1) the death or permanent disabling of the specimen;
- (2) the removal of the specimen from the State of Alabama;
- (3) the introduction of the specimen or any of its progeny into an area beyond the historical range of the species; or
- (4) the holding of the specimen in captivity for a period of more than 45 consecutive days,

Threatened Species

- c. Any employee or agent of the ADCNR who is designated by that agency for such purposes, may, when acting in the course of his official duties, take any resident federally listed threatened plant, fish or wildlife for conservation purposes of the Act and this Cooperative Agreement, or any Project Agreement attached thereto; provided, that the authority conveyed to the ADCNR by this subsection may, at any time, be temporarily suspended for a particular project or part of a conservation program by written notification from the Regional Director, FWS, upon his receipt of substantial evidence demonstrating the use of this authority for purposes inconsistent with the purposes of this Act. Upon notification of the temporary suspension and the reasons therefore, the ADCNR may request from the Director, FWS, an opportunity to demonstrate compliance with the purposes of the Act. The Director shall promptly consider the evidence so submitted by the ADCNR and either reaffirm the conclusion of the Regional Director, FWS, and revoke the authority temporarily suspended pursuant to this subsection, or reverse the conclusion of the Regional Director, FWS, and reinstate the authority temporarily suspended.

Emergency Provisions

d. Any employee or agent of the ADCNR who is designated by that agency for such purposes, may, when acting in the course of his official duties, take federally listed endangered and threatened plants, fish or wildlife without a permit if such action is necessary to:

- (1) aid a sick, injured, or orphaned specimen; or
- (2) dispose of a dead specimen; or
- (3) salvage a dead specimen which may be useful for scientific study; or
- (4) remove specimens which constitute a demonstrable, but non-immediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed, in a remote area; or
- (5) defend his own life or the lives of others. Any taking pursuant to this Subsection 2(d) must be reported in writing within 5 days to the Regional Director, FWS, for transmission to the Division of Law Enforcement, FWS, in Washington, D.C. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the FWS.

3. Records

The ADCNR shall maintain records of: (1) its federally funded projects for the conservation of endangered, threatened, or at-risk plants, fish or wildlife in accordance with the Federal Aid Manual; and (2) the number of specimens of each species of federally listed endangered, threatened, or at-risk plants, fish or wildlife taken by State employees or agents pursuant to Subsections 2(b) and (c) of this agreement, the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking.

4. Notification

The ADCNR agrees to inform the FWS of any change in circumstances which could cause the program to be out of conformance with the requirements of Section 6(c) of the Act. Included without limitations are changes in the ADCNR relevant constitutional, statutory, or regulatory authority. The ADCNR shall promptly furnish the FWS with an assessment of the effect of such a change on the State's ability to remain in compliance with the requirements of Section 6(c) of the Act. The Regional Director, FWS, agrees to notify the State of all regulations and rulemakings, in accordance with Section 4 of the Act which might affect the adequacy and activeness of the State's program.

5. Effective Date and Renewal

- a. This agreement shall become effective when signed by the Regional Director, FWS, and the ADCNR, and may be renewed in the following manner: Not later than June 30 of each year, the ADCNR shall submit to the FWS, the following items: (1) an updated list of the Federal and State listed endangered, threatened, and at-risk plants, fish or wildlife which are resident in the State; (2) a memorandum of law analyzing any changes in the ADCNR's statutory authority for endangered and threatened plants, fish or wildlife which were made since the date of the previous program submission.

This memorandum shall also analyze the application of State law to any resident plant, fish or wildlife which have been added to the Federal endangered and threatened species list since the date of the previous program submission; (3) a list of substantial changes in the State's conservation program for resident endangered or threatened plants, fish or wildlife which are being proposed or which have occurred since the date of the previous program submission; (4) a detailed description of the number of specimens of each species of federally listed endangered and threatened plants, fish or wildlife taken by State employees or agents pursuant to Subsections 2(b) and (c) of this agreement, the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking; and (5) copies of such reports the ADCNR may have prepared since the previous program

submission which discuss its conservation program accomplishments for listed endangered and threatened plants, fish or wildlife.

- b. The FWS shall notify the ADCNR in writing on or before October 1 of each year either that the Cooperative Agreement is renewed effective October 1 of that year, or that the State agency's conservation program or authorities are not in compliance with the criteria of Section 6(c) of the Act and that unless appropriate changes are made by June 30 of the following year, this agreement shall be terminated. If the ADCNR has not received notification concerning the renewal of this agreement by October 1 of each year, it shall continue in force and effect as if it had been renewed.
- c. For purposes of this agreement, the phrase "previous program submission" means either the program submission of (1) the original Cooperative Agreement or (2) the most recent renewal application for the Cooperative Agreement, whichever is later in time,

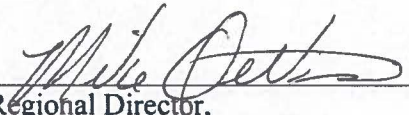
6. Amendment

This agreement may be amended at any time with the concurrence of the signatory parties.

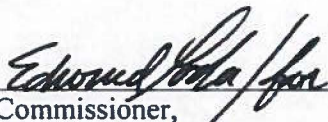
7. Termination

This agreement may be terminated: (a) by mutual agreement; (b) by the ADCNR upon 60 days written notice to the FWS; (c) or notwithstanding the renewal provisions in Section 5(b) of this Cooperative Agreement, by the FWS upon 60 days written notice to the signatory party for the State of Alabama from the Regional Director, FWS, stating that the State's agreed upon endangered and threatened fish or wildlife conservation program is no longer in compliance with the criteria of Section 6(c) of the Act or that the State has violated a provision of this agreement. The ADCNR may submit a written request for review to the Director, FWS, within 30 days of receipt of the termination notice. The Director will consider all evidence submitted by the ADCNR in its request for review and either reaffirm the conclusion of the Regional Director and terminate this agreement at

the end of the 60-day notification period, or reverse the conclusion of the Regional Director and revoke the notice of termination. All Federal funds which have been obligated to, but not expended by, the ADCNR as of the date the termination notice shall be retained by the FWS for reallocation pursuant to Section 6(d) of the Act, unless: (1) those funds are specifically approved by the Regional Director for expenditure before the date of actual termination; or (2) the notice of termination is revoked by the Director, FWS.

Signed: 
Regional Director,
Fish and Wildlife Service

Date: May 11, 2018

Signed: 
Commissioner,
Alabama Department of Conservation
and Natural Resources

Date: _____

APPROVED LEGAL
