UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

December 12, 2019

The Honorable Noah Valenstein
Secretary
Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Dear Secretary Valenstein:

This letter responds to the Florida Department of Environmental Protection's (FDEP) requests that the U.S. Environmental Protection Agency initiate an informal Endangered Species Act (ESA) Section 7 consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services), and designate FDEP as a non-Federal representative for informal ESA consultation. In an email to the EPA dated July 17, 2019, FDEP suggested that the EPA designate Florida as the non-Federal representative for informal ESA Section 7 consultation to prepare a biological assessment on FDEP's anticipated request to assume administration of a Clean Water Act (CWA) Section 404 program in the State. In addition, during a call held between your staff and members of my staff on November 5, 2019, FDEP specifically requested that the EPA designate FDEP as the non-Federal representative for this informal consultation.

The EPA has previously taken the position that EPA approval of a state's request to assume administration of a CWA Section 404 program is nondiscretionary and consultation is not required; the Agency is currently giving further consideration to that position. In the meantime, the EPA has decided to voluntarily engage in informal consultation with the Services under ESA Section 7 and, pursuant to 50 CFR §402.08, designate FDEP as the non-Federal representative to conduct informal consultation to prepare a biological assessment for this effort.

We appreciate Florida's interest in working with the EPA on these issues. If you have any further questions, please feel free to contact me, or have a member of your staff contact Jeaneanne Gettle, Director of the Water Division, at (404) 562-8979 or gettle.jeaneanne@epa.gov.

Sincerely,

Mary S. Walker
Regional Administrator

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cc: Dr. Roy E. Crabtree, Regional Administrator
NOAA Marine Fisheries Service, Southeast Regional Office

Mr. Leopoldo Miranda, Regional Director
U.S. Fish and Wildlife Service, Southeast Region