

### FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

JOHN S. LAMBERT  
P.O. DRAWER 328  
SUMRALL, MISSISSIPPI 39482  
PHONE: 601/758-4970 FAX: 601/758-4970

2. AUTHORITY-STATUTES

16 U.S.C. 1539(a)(1)(A)  
16 U.S.C. 703-712

REGULATIONS (Attached)

50 C.F.R. §§ 13 & 17

3. NUMBER

TE-075424-0

4. RENEWABLE

YES

NO

5. MAY COPY

YES

NO

6. EFFECTIVE

05/27/2005

7. EXPIRES

12/31/2025

8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)

9. TYPE OF PERMIT

ENDANGERED & THREATENED SPECIES - ENHANCEMENT OF SURVIVAL - SAFE HARBOR [SHET]

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

THE COVERED PROPERTY IS THAT PARCEL OF LAND KNOWN AS MARTIN BRANCH WOODLAND, CONSISTING OF 754 ACRES IN COVINGTON COUNTY, MISSISSIPPI AND AS FURTHER DESCRIBED IN CONDITION 11.E, BELOW.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 C.F.R. §§ 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED IN BLOCK 1, AND AUTHORIZED AGENTS AS SET FORTH IN 50 CFR §§ 13.24 & 13.25.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ANY AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A - Q (6 PAGES TOTAL).

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.P AND 11.Q OF THIS PERMIT.

ISSUED BY

TITLE

DATE

*John S. Lambert*

DEPUTY REGIONAL DIRECTOR, FWS,  
SOUTHEAST REGION

May 24, 2005

ORIGINAL

E. The Permit Area consists of the "Enrolled Property" depicted and described in the approved Martin Branch Woodland Safe Harbor Agreement ("Agreement"), identified by Agreement and Tracking Number TE-075424-0. Within the Permit Area, activities authorized by this Permit include all actions prescribed by and associated with the implementation of the Permittee's Agreement, which is incorporated by reference herein and is identified as Attachment 1 of this Permit.

F. The Permittee is *Picoides borealis* known as the "Downy Woodpecker" Property

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6. As set forth in the Agreement, the Permittee shall notify the U.S. Fish and Wildlife Service of any transfer of lands subject to the Agreement and this Permit.

7. All authorized incidental take will result only from those actions and activities described in the Agreement and as authorized via this permit.

- G. The Permit is based upon the Permittee's expected compliance with the terms and conditions identified herein and those identified in the Agreement, which is herein incorporated by reference. Where a conflict occurs between the Agreement and this Permit, the Permit shall control.
- H. The Permittee and the U.S. Fish and Wildlife Service agree that modifications and amendments to the Agreement and this Permit may occur. The following procedures shall govern the modification and amendment process:
1. Either the Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the Agreement or Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on the operations of the Agreement and on the covered species. This analysis shall be conducted jointly between the Permittee and the U.S. Fish and Wildlife Service offices in Conditions 11.P and 11.Q. The Permittee and the U.S. Fish and Wildlife Service will respond to a proposed modification or amendment within sixty (60) days of the notice. Subject to Conditions 11.H.2 and 11.H.3. below; absent any objection from either party, the proposed modification and/or amendment will be determined as minor and shall become effective upon written approval by the other party. In the event of an objection by either party, the objecting party shall notify, in writing, the other party. Said notification shall include the specific nature of the objection, the reasoning behind the objection, and alternative resolutions to the issue being disputed.
  2. The U.S. Fish and Wildlife Service will not propose or approve any modifications or amendments to the Agreement or Permit if it determines that such modifications or amendments will result in operations of the Agreement or Permit that are significantly different from those analyzed in connection with the original Agreement and Permit. If it determines that a modification or amendment will result in operations of the Agreement or Permit that are substantially different from those analyzed in connection with the original Agreement and Permit, the U.S. Fish and Wildlife Service will not propose or approve such modification or amendment to the Agreement or Permit prior to the Service complying with and satisfying the procedural requirements of Federal laws and regulations as outlined in Condition 11.H.3, below.
  3. Any amendment or modification shall conform with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's permit regulations codified at 50 C.F.R. Parts §§ 13 and 17.
  4. The Permittee can request termination of the Permit at his sole and absolute discretion. In the event the Permittee elects to terminate the Permit before the end of its twenty (20) year duration, the Permittee agrees to provide the U.S. Fish and Wildlife Service with sixty (60) days advance written notice. After the 60-day notice period, the Permit and the Agreement shall be deemed void and canceled upon receipt of the Permit by the U.S. Fish and Wildlife Service office in Condition 11.P.

- I. The Permittee shall provide funding necessary for the implementation of the Agreement and this Permit through the Permit's expiration date or other termination as provided in the Agreement. By accepting this Permit, the Permittee warrants that he has and will expend such funds as necessary to fulfill the Agreement and Permit obligations. The Permittee will promptly notify the U.S. Fish and Wildlife Service offices in Conditions 11.P and 11.Q. in writing of any change in his ability to fulfill these obligations.
- J. Neither this Permit nor the Agreement authorizes the incidental take of any other federally listed plant and/or animal species. In the event other listed plant and/or animal species are likely to be adversely affected by a Permittee's actions associated with the Agreement and this Permit, the Permittee will meet with the U.S. Fish and Wildlife Service and develop appropriate management or other measures that will preclude any unauthorized adverse effects. If activities proposed by the Permittee would unavoidably result in adverse affects to species not covered by this Permit, the Permittee can amend this Permit by the procedures outlined in Condition 11.H. or seek any other available remedies to such situations.
- K. Upon locating a dead, injured, or sick covered species, or other species that may be covered by the Permit in the future, a Permittee will notify the U.S. Fish and Wildlife Service Law Enforcement Office, 6578 Dogwood View Parkway, Suite B, Jackson, Mississippi 39213. Phone: 601/965-4699. Facsimile: 601/965-5693. Notification shall also be made within three (3) work days of the discovery to the U.S. Fish and Wildlife Service office identified in Condition 11.P. If further authorized by the U.S. Fish and Wildlife Service Law Enforcement Office identified herein, the Permittee may carefully and humanely handle sick, injured, or dead specimens to ensure effective treatment of live individuals or to preserve biological materials of deceased individuals for later analysis. In conjunction with the care of sick or injured individuals or preservation of biological materials from a dead animal, the Permittee shall endeavor to ensure that the site where a dead, sick, or injured specimen is obtained is not unnecessarily disturbed.
- L. The Permittee shall provide an annual report to the U.S. Fish and Wildlife Service offices identified in Condition 11.P and 11.Q and the Permittee will meet as often as necessary, but not less than annually, with the U.S. Fish and Wildlife Service to review the information contained in the annual report. All meetings will provide an opportunity for resolutions of disputes regarding Permit and/or Agreement implementation and to discuss amendments or modifications to this Permit and Agreement. The dates of these meetings will be mutually-agreed upon, as will a list of potential attendees and potential discussion topics.
- M. Beginning in 2006 and for the duration of this Permit, the Permittee shall submit an annual report by March 31 to the U. S. Fish and Wildlife Service offices in Conditions 11.P and 11.Q, that contains the following:

Condition M (Continued)

1. The information set forth in Section 4.4 of the Agreement.
2. An identification of any material non-compliance of the Permit and all measures employed to remediate such non-compliance.
3. An accurate map depicting all portions of the Enrolled Property that have baseline responsibilities identified in the Agreement, noting any changes, additions, deletions, or other modifications made to the portions of the Enrolled Property affected by implementation of this Permit and Agreement.
4. The following signed and dated certification from a responsible official who supervised or directed the preparation of the report:

*"Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete."*

- N. The U.S. Fish and Wildlife Service agrees to use its best efforts to maintain the confidentiality of any information or data submitted by or on behalf of Permittee in the annual report required by Condition 11.M and/or the Agreement. In addition, the U.S. Fish and Wildlife Service agrees to use its best efforts to maintain the confidentiality of any information or data submitted by or on behalf of the Permittee pursuant to this Permit which the Permittee has designated as proprietary, commercially or financially sensitive, or confidential, to the maximum extent allowed by law. The U.S. Fish and Wildlife Service shall provide written notice to the Permittee upon receiving a request by any other agency or party for such information or data or a record including such information or data. In the event that the U.S. Fish and Wildlife Service determines that it may be required to disclose the information or data to the requesting agency or other party, it shall provide to the Permittee written notice thereof prior to the anticipated date of disclosure, to allow the Permittee to object and to take appropriate action to seek to prevent the disclosure or to assure that the requesting party will likewise maintain the confidentiality of the information or data with respect to further disclosure.
- O. If additional conservation measures are necessary to respond to unforeseen circumstances, the U.S. Fish and Wildlife Service may require additional measures of the Permittee only if such measures are limited to modifications within the Agreement's conservation strategy for the affected species, and only if those measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the Agreement without the consent of the Permittee.

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Condition O (Continued)

The U.S. Fish and Wildlife Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The U.S. Fish and Wildlife Service will consider, but not be limited to, the following factors:

1. Size of the current range of the affected species;
2. Percentage of range adversely affected by the Agreement;
3. Percentage of range conserved by the Agreement;
4. Ecological significance of that portion of the range affected by the Permit
5. Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the Agreement; and
6. Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

These assurances allow the enrolled landowner to alter or modify the enrolled property, even if such alteration or modification results in the incidental take of the covered species to such an extent that the take returns the either/both of the covered species to the originally agreed upon baseline conditions. These assurances may apply to the enrolled property as designated or otherwise specified in the Agreement. These assurances are also contingent on the Permittee's compliance with the obligations of the Agreement and this Permit. Further, the assurances apply only to this particular Agreement, only if the Agreement is being properly implemented, and only with respect to species covered by the Agreement.

- P. For purposes of monitoring compliance and administration of the terms and conditions of this Permit, the contact office of the U.S. Fish and Wildlife Service is: Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Phone: 601/965-4900. Facsimile: 601/965-4340.
- Q. Copies of reports and any other documentation submitted in response to the operation and management of this Permit shall also be provided to: Endangered and Threatened Species Permits, U.S. Fish and Wildlife Service (AES/TE/P), 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. Phone: (404) 679-4000. Facsimile: (404) 679-7081.

END