



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
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Atlanta, Georgia 30345

MAY 24 2005

FWS/R4/AES

## Memorandum

To: Deputy Regional Director, FWS, Atlanta, GA (DRD)

From: Assistant Regional Director, FWS, Atlanta, GA (AES)

Subject: Set of Findings: Martins Branch Woodland Safe Harbor Agreement for the Gopher Tortoise and Red-cockaded Woodpecker; Application for an Enhancement of Survival Permit.

The U.S. Fish and Wildlife Service's (Service) Mississippi Ecological Services Field Office has assisted Dr. John Lambert (Landowner/Applicant) and Environmental Defense in developing this Safe Harbor Agreement (Agreement) and application for a enhancement of survival permit (Permit), in accord with the Service's Safe Harbor Policy, section 10(a)(1)(A) of the Endangered Species Act (Act), and implementing regulations. The purpose of the 20-year Agreement and Permit is to enhance and restore habitat benefiting the gopher tortoise (*Gopherus polyphemus*), a threatened species, and the red-cockaded woodpecker (*Picoides borealis*), an endangered species, in Covington Co., Mississippi. The Permit would allow the Landowner to take only those gopher tortoises and red-cockaded woodpeckers (RCW) that increased in range or number on the property above the baseline, as an incidental consequence of the Landowner returning land management to baseline conditions. The Agreement, Biological Opinion, and the Screening Form for a National Environmental Policy Act Categorical Exemption were reviewed by personnel in the Field Office and Regional Office. Also, the Agreement was reviewed by the Office of the Regional Solicitor. None of these offices or personnel objected to the issuance of the Permit.

### **I DESCRIPTION OF PROPOSAL** (proposed activities, location, and species involved):

The Landowner has submitted an Agreement and an application to the Service pursuant to section 10(a)(1)(A) of the Act. The Landowner's property is about 750 acres, located near Sumrall, MS, in Covington County and is considered the "enrolled lands" for purposes of the Agreement and Permit. Portions of the property currently are inhabited by the gopher tortoise. No RCWs currently occupy the property. Following technical guidance and as reviewed by the Service, the Landowner's baseline conditions for the gopher tortoise consist of 57.3 acres of habitat associated with 14 active burrows. The baseline is zero for the RCW. The Landowner will restore, enhance, and increase habitat for the gopher tortoise in baseline areas as well as throughout all other uplands on the enrolled land that currently are unoccupied by tortoises. Such management will consist of frequently prescribed fire and thinning timber to create an open



forest overstory and understory. The Landowner will restore and maintain a cavity cluster and foraging habitat for at least one potential RCW group on at least 75 acres, in accord with the Service's standards for managed RCW stability on private lands. RCW habitat restoration methods will involve prescribed fire, timber thinning, hardwood control, and delayed timber harvests.

If the Landowner chooses to return the property to baseline conditions, the Permit would authorize the take of any gopher tortoises and RCWs that increased in range or number on the property, in excess of the baseline, as an incidental consequence of otherwise lawful land use activities. The incidental take authorization is valid only if the Landowner has restored and enhanced habitat, in accord with these and all other terms and conditions of the Agreement and Permit.

## **II. ENHANCEMENT OF SURVIVAL PERMIT ISSUANCE CRITERIA - ANALYSIS AND FINDINGS**

### **1. The taking will be incidental and in accordance with the terms of the Agreement.**

The Service finds that the proposed take of the gopher tortoise and RCW above the baseline will be incidental to otherwise lawful land use activities. No existing, baseline gopher tortoise will be taken. Since the RCW baseline is zero, any future RCWs on the property will represent those in excess of the baseline. To return to baseline conditions, according to the terms of the Agreement and Permit, the Landowner must demonstrate that baseline conditions were maintained and that beneficial management practices were accomplished.

### **2. Implementing the Agreement will provide a "net conservation benefit" to the listed species.**

The Service assessed net conservation benefits, as described in the Biological Opinion, as the effects of the beneficial management minus the effects of incidental take above the baseline, as compared to the status of these species on the Landowner's property without the effects of management under an Agreement. In this Biological Opinion, which is incorporated by reference herein, we concluded that a net conservation benefit to the gopher tortoise and RCW will occur by implementation of the Agreement. Without the Agreement and habitat restoration, the gopher tortoise will decline and become extirpated on the property. This is because gopher tortoise habitat, as well as RCW habitat, will decline in quality and abundance in the absence of frequent prescribed fire and other measures to control hardwood encroachment and forest succession that creates unsuitably dense forest conditions for these species. The net effect of the Agreement is that the gopher tortoise habitat will be restored and stabilized, and this is expected to result in a corresponding enhancement of the extant gopher tortoise population (population growth, reproduction, and burrow fidelity). For the RCW as well, the Agreement provides additional habitat that otherwise would not exist without the Agreement.

**3. Direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.**

The effect of the Service's proposed issuance of the Permit was evaluated as a formal intraService consultation, in accord with section 7(a)(2) of the Act. In this Biological Opinion, incorporated here by reference, the Service concluded that the Agreement and Permit will not likely jeopardize the continued existence of, or appreciably reduce the likelihood of survival and recovery of, both the gopher tortoise and RCW.

**4. Implementation of the terms of the Agreement will be consistent with applicable Federal, State, and Tribal laws and regulations.**

There are no applicable State or Tribal laws and regulations for the implementation of the terms of the Agreement on the Landowner's property in Covington County, Mississippi. The Service's archaeologist has evaluated the Agreement, with information from the State Historic Preservation Office, and concluded that implementation is consistent with the National Historic Preservation Act. If the Landowner returns the property to baseline conditions and the Service salvages gopher tortoises or RCWs above the baseline by their capture and relocation, then the Service will ensure that all applicable State permits (Mississippi Department of Wildlife, Fisheries and Parks) are obtained. The Service has ensured and will continue to ensure that the Agreement will be consistent with all applicable laws and regulations.

**5. Implementation of the terms of the Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.**

The Service has reviewed ongoing conservation and recovery programs for the gopher tortoise and RCW. The terms of the Agreement are consistent and do not conflict with these programs. As described in the Biological Opinion, the gopher tortoise and RCW have similar habitat requirements. Forest or stand conditions upon habitat restoration and enhancement for the RCW also restores and enhances habitat for the gopher tortoise.

**6. The Applicant has shown capability for and commitment to implementing all of the terms of the Agreement.**

The terms of the Agreement for habitat restoration and management involve the manipulation of forest stand conditions using prescribed fire and commercial or non-commercial timber thinning or harvests based on tree diameter and stocking (basal area). The Applicant has been managing the timber and wildlife resources on the property using these criteria and methods for many decades. Furthermore, the Applicant's forest management objectives are to restore and produce longleaf pine for economic and other values, which is compatible with the restoration and enhancement of habitat for the gopher tortoise and RCW. Thus, the Applicant is knowledgeable, capable, and committed to implementing the terms of the Agreement.

**III. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS**

The Service has no evidence that the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR § 13.21(b)-(c).

**IV. PUBLIC COMMENTS**

The Service published a Federal Register Notice of Availability on July 21, 2003, soliciting public review and comment for a 30-day period. One public comment letter was received during the review process, and indicated strong support for the intent and goals of the Agreement and Permit.

**V. RECOMMENDATIONS ON ISSUANCE OF PERMIT**

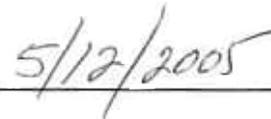
Based on our findings with respect to the Permit application, Agreement, and Biological Opinion, the issuance of a section 10(a)(1)(A) Permit to Dr. John Lambert is recommended.

Attachments

*Submittal.*



Acting Assistant Regional Director

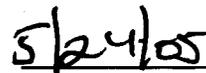


Date

*Concurrence.*



Deputy Regional Director



Date