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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R4-ES-2022-0017; FXES11130400000-223-FF04EM1000]

Safe Harbor Agreement and Enhancement of the Survival Permit for  
the Gopher Tortoise and Red-Cockaded Woodpecker, Covington County, MS;  
Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

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SUMMARY: We, the Fish and Wildlife Service (Service), have received a  
written request from Dr. John S. Lambert (applicant) to renew an  
enhancement of survival permit TE 075424 (permit) for an existing safe  
harbor agreement (SHA) without change. The Service is making the  
proposed permit renewal, which includes the applicant's proposed  
updated SHA as well as the Service's draft environmental action  
statement (EAS), available for public review and comment.

DATES: We must receive your written comments on or before March 28,  
2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online  
in Docket No. FWS-R4-ES-2022-0017 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the  
documents, you may do so in writing by any of the following methods:

Online: <https://www.regulations.gov>. Follow the  
instructions for submitting comments on Docket No. FWS-R4-ES-2022-0017.

U.S. mail or hand-delivery: Public Comments Processing,  
Attn: Docket No. FWS-R4-ES-2022-0017; U.S. Fish and Wildlife Service,  
MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: John Tupy, by telephone at 601-321-  
1133, or via email at [john\\_tupy@fws.gov](mailto:john_tupy@fws.gov). Individuals in the United  
States who are deaf, deafblind, hard of hearing, or have a speech  
disability may dial 711 (TTY, TDD, or TeleBraille) to access  
telecommunications relay services. Individuals outside the United  
States should use the relay services offered within their country to  
make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service),  
have received a written request from John S. Lambert (applicant) to  
renew an existing enhancement of survival permit (TE 075424) (permit)  
for an additional 20 years beyond its current expiration date. The  
Service and the applicant have mutually agreed that no changes or  
amendments would be made to the safe harbor agreement (SHA). The  
existing permit associated with the SHA was issued on May 27, 2005,  
under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C.  
1531 et seq.), and is in effect until December 31, 2025. Renewing the  
SHA is intended to benefit the recovery of the federally listed  
threatened gopher tortoise (*Gopherus polyphemus*) and federally listed  
endangered red-cockaded woodpecker (*Picoides borealis*) on 754 acres  
(ac) of enrolled privately owned lands in Covington County,  
Mississippi. The Service is making the applicant's proposed updated SHA  
(October 1, 2021) and the Service's draft environmental action  
statement (EAS) available for public review and

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comment. The draft EAS supports the Service's preliminary determination  
that the proposed permit renewal is eligible for a categorical  
exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C.  
4231 et seq.). To make this determination, we used our EAS and low-  
effect screening form, which are also available for public review.

## Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm," as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term "harass" is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife through annoyance to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are at 50 CFR 17.32.

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs and the subsequent permits issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA encourage private and other non-Federal property owners to implement conservation actions for federally listed species. In exchange for voluntarily undertaking management activities, the landowners are assured that they will not be subjected to increased property-use restrictions resulting from their efforts to either attract listed species to their property or to increase the numbers or distribution of listed species already on their property. Landowners may make lawful use of their enrolled property during the permit term and may incidentally take the listed species named on the permit. Application requirements and issuance criteria for permits associated with SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c). As provided for in the Service's final Safe Harbor Policy (64 FR 32717; June 17, 1999), safe harbor agreements provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification results in the incidental take of a listed species, to such an extent that the property is returned back to the originally agreed-upon baseline conditions. Private landowners may voluntarily terminate a safe harbor agreement at any time and in accordance with 50 CFR 13.26. If this occurs, landowners must relinquish the associated enhancement of survival permit pursuant to section 10(a)(1)(A) of the ESA.

## Safe Harbor Agreement

The private lands owned by the applicant and enrolled under the existing SHA and valid permit consist of 754 ac known as the Martin Branch Woodlands, in Covington County, Mississippi. The baseline established in 2005 was 57.3 ac of occupied gopher tortoise habitat and 0 ac of occupied red-cockaded woodpecker habitat. Martin Branch Woodlands has been managed and enhanced above baseline since entering the SHA. The renewal of the SHA contains no changes or amendments to the SHA. Under the SHA, the applicant will continue to undertake the following habitat maintenance and enhancement actions intended to benefit the gopher tortoise on the enrolled property: (1) Avoid planting or regenerating pine trees in dense stands with more than 400 surviving seedlings per acre; (2) mark burrows prior to the operation of vehicular mechanical equipment used to thin and harvest timber for habitat restoration; and (3) avoid running over tortoises or collapsing burrows and burying tortoises with heavy equipment during timber harvest and related activities.

The applicant's voluntary forest and habitat management plan for the enrolled property will restore, enhance, and increase habitat for the gopher tortoise in all pine uplands with soils suitable for the species on about 480 ac. Three basic habitat conditions or measures will be attained by this plan: (1) Maintenance of basal areas at or below 70 ft<sup>2</sup>/ac; (2) application of frequent prescribed fire; and (3) restoration of longleaf pine. The applicant will maintain and restore suitable nesting and foraging habitat for at least one group of red-cockaded woodpecker on the property. Currently, no red-cockaded woodpeckers inhabit the property.

The landowner has met the requirements set forth in the SHA and is currently in compliance with the conditions set forth in the permit. All monitoring and reporting are up to date.

Under comment and review is the request to renew the existing valid permit associated with the SHA that was issued May 27, 2005, under ESA, and is in effect until December 31, 2025. The applicant is requesting

to extend the permit period for an additional 20 years beyond its current expiration date.

#### National Environmental Policy Act Compliance

The renewal of the permit is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit renewal is eligible for categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the SHA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources that would be considered significant. To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

#### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment--including your personal identifying information--may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

#### Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulations at 40 CFR 1506.6 and 43 CFR 46.305.

James Austin,  
Acting Field Supervisor, Mississippi Field Office, South Atlantic-Gulf  
& Mississippi-Basin Regions.  
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