

# **FINDING OF NO SIGNIFICANT IMPACT**

**Issuance of a Enhancement of Survival Permit**  
**authorizing above baseline incidental take**  
**of three (3) listed mussel species benefitting from**  
**Streambed Repair and Restoration of Flow in Chewacla Creek**  
**associated with approval of a Safe Harbor Agreement**  
**Lee County, Alabama**

The U.S. Fish and Wildlife Service proposes to issue an Enhancement of Survival Permit (ESP) pursuant to section 10(a)(1)(A) of the Endangered Species Act, as amended (Act). This is in response to, and in association with, the implementation of a Safe Harbor Agreement (SHA) and application for incidental take of the endangered ovate clubshell mussel (*Pleurobema perovatum*) and southern clubshell mussel (*Pleurobema decisum*), and the threatened fine-lined pocketbook mussel (*Lampsilis altilis*), by repairing subsidence features in and restoring a minimum flow to Chewacla Creek at the base of Lake Ogletree Dam in Auburn, Lee County, Alabama.

The Service analyzed five different alternatives to the proposal in an Environmental Assessment (EA). The analysis of alternatives included: (1) a no action alternative; (2) repair subsidence features only; (3) supply quarry water to Lake Ogletree only; (4) repair subsidence features and supply quarry water to Chewacla Creek downstream of the Lake Ogletree Dam; and (5) the Applicants' proposed restoration action to repair subsidence features and supply quarry water to Lake Ogletree with water released into Chewacla Creek to mimic a more natural stream flow as described in the SHA.

Alternative 5, the proposed action, was selected over the other Alternatives because it meets the ESP issuance criteria and the standards of approval of a SHA. Section 10(a)(2)(A) of the Act requires that the Service issue an ESP when an Applicant's SHA satisfies the criteria established in section 10(a)(2)(A)(i-v). The issuance criteria are fully explained in the Service's Set of Findings (SOF) and Biological Opinion (BO) documents, which are incorporated by reference to this document. In assessing possible alternatives, the Service also considered its statutory requirements as identified in section 10(a)(1)(A) of the Act, in which certain limitations are placed on the Service with respect to actions which may be undertaken.

Implementation of the agency's decision/issuance of the ESP would be expected to result in the following environmental, social, and economic effects:

A more natural, consistent flow will be restored to the section of Chewacla Creek affected by the streambed repair and restoration actions outlined in the SHA. This will result in positive changes to surface water flow and will benefit all aquatic species in the entire reach of the creek.

Temporary minor disturbances to soils on the Harris property will result from installation of the new pipeline segment and repair of new or existing subsidence features. There will be no effects to cultural or historic resources. No social or economic effects are expected from the project.

Populations of the three listed species of mussels are expected to re-colonize the sections of Chewacla Creek improved by the repair and restoration actions outlined in the ESP/SHA.

Measures to mitigate and/or minimize adverse effects have been incorporated into the SHA and authorizing ESP. These measures include:

The Applicants will monitor for, and repair if necessary, subsidence features in Chewacla Creek and within ten (10) feet of its bank within the enrolled properties so that the minimum flow is not diminished. Six gauging stations will be installed and monitored to insure a minimum continuous stream flow, equivalent to two (2) million gallons per day, in the enrolled portions of Chewacla Creek. In addition, the Applicants will perform annual stream bioassessment monitoring, including assessment of macroinvertebrate, mussel, and fish communities, along with water chemistry analysis and a visual physical habitat assessment for a period of fifteen (15) years. The Applicants will produce an annual report for review by the Service, including the following information, to assure compliance with the terms and conditions of the SHA: (1) verification of maintenance of the baseline (through the annual bioassessment), (2) implementation of any SHA conservation measures, (3) notification of any known take of covered species, (4) monitoring data from stream gauges, (5) bioassessment results, and (6) pumping and stream flow records.

The proposal has been coordinated with all interested and/or affected parties. Meetings were held with the Applicants and their consultants. A Notice of Availability was published in the *Federal Register* on March 10, 2003, notifying the public of the availability of the Environmental Assessment (EA) and SHA from March 10 through April 9, 2003, a 30-day comment period.

Copies of all decision and supporting materials referenced herein are available by writing:

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Based on the Service's BO, the analysis reflected in the EA and the SOF, and the terms and conditions stated in the Service's authorizing ESP, it is my determination that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required. This determination is based on the following factors pursuant to 40 CFR 1508.27:

1. Both beneficial and adverse effects have been considered and this action will not have a significant effect on the human environment. (EA, pages 15-16).
2. The actions will not have a significant effect on public health and safety. (EA, pages 15-16).
3. The project will not significantly affect any unique characteristics of the geographic area such as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas (including those listed on the National Register or Natural Land Marks). (EA, page 9; Appendix B).
4. The effects on the quality of the human environment are not likely to be highly controversial. (EA, pages 15-16).
5. The actions do not involve highly uncertain, unique, or unknown environmental risks to the human environment. (EA, pages 15-16).
6. The actions will not establish a precedent for future actions with significant effects nor does it represent a decision in principle about a future consideration. (EA, pages 7-9; page 21).
7. There will be no cumulatively significant impacts on the environment. Cumulative impacts have been analyzed with consideration of other similar activities on adjacent lands, in past action, and in foreseeable future actions. (EA, pages 20-22).
8. The actions will not affect any site listed in, or eligible for listing in, the National Register of Historic Places, nor will they cause loss or destruction of significant scientific, cultural, or historical resources. (EA, page 9; Appendix B).
9. The actions are not likely to adversely affect endangered or threatened species, or their habitats. (EA, pages 14-15; page 21).
10. The actions will not lead to a violation of Federal, State, or local laws imposed for the protection of the environment. (EA, pages 7-9; page 21).

## Supporting References

Balch and Bingham, LLP. 2003. Chewacla Creek Safe Harbor Agreement.

Code of Federal Regulations, Title 40.

U.S. Fish and Wildlife Service. 2003. Environmental Assessment, Conservation Measures to Restore Flow to Chewacla Creek downstream of Lake Ogletree Dam In Auburn, Lee County, Alabama.

U.S. Fish and Wildlife Service. 2003. Set of Findings: Approval of the Chewacla Creek Safe Harbor Agreement.

U.S. Fish and Wildlife Service. 2003. Biological Opinion on the effects of the Chewacla Creek Safe Harbor Agreement.

U.S. Fish and Wildlife Service. 2003. Enhancement of Survival Permit - TE-070113-0. Issued to the signatories of the Chewacla Creek Safe Harbor Agreement.

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Deputy Regional Director

Date