

FEDERAL FISH AND WILDLIFE PERMIT



2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(A)
16 USC 1539(a)(1)(B)

REGULATIONS (Attached)

50 CFR §§ 13 & 17

3. NUMBER

TE038547-0

4. RENEWABLE

YES
 NO

5. MAY COPY

YES
 NO

6. EFFECTIVE

SEE BLOCK 9

7. EXPIRES

12/31/2023

1. PERMITTEES

GEORGIA POWER COMPANY
241 RALPH MCGILL BOULEVARD
ATLANTA, GEORGIA 30308

TELEPHONE: 404/506-7778

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

MR. CHRIS M. HOBSON
VICE PRESIDENT, ENVIRONMENTAL
AFFAIRS

9. TYPE OF PERMIT

CANDIDATE SPECIES - ENHANCEMENT OF SURVIVAL
(EFFECTIVE THE DATE *MOXOSTOMA ROBUSTUM* BECOMES A
LISTED SPECIES)

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

THE OCMULGEE RIVER, GEORGIA, LYING DOWNSTREAM OF LLOYD SHOALS DAM AND UPSTREAM OF A LOW DAM AT JULIETTE, GEORGIA, BETWEEN RIVER MILES 250.2 AND 230.9, AND OTHER AREAS WITHIN THE OCMULGEE RIVER SUBJECT TO PERMITTEE'S CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES (CCA) MONITORING PROVISIONS AND AS CONDITIONED HEREIN.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 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 ABOVE, AND AUTHORIZED AGENTS.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS 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 - T (7 PAGES TOTAL).

12. REPORTING REQUIREMENTS

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

ISSUED BY

TITLE

DATE

DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

1/9/02

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- E. The Permit Area will consist of those lands identified in Block 10. Within the Permit Area, activities authorized by this Permit include all actions prescribed by and associated with the implementation of the Permittee's CCAA.
- F. The authorization granted by this Permit is valid from the date that *Moxostoma robustum* is listed as threatened or endangered under the Endangered Species Act of 1973, as amended, to the expiration date of this Permit and is subject to full and complete compliance with, and implementation of, the Permittee's CCAA executed by the Permittee, the Georgia Department of Natural Resources, and the USFWS.
- G. The take of all *Moxostoma robustum* within the Permit Area is authorized when such take is in the form of harassment, harm, and direct mortality that results from electrofishing, sampling, holding or from any other conservation measure or other action specifically identified in the CCAA and/or this Permit.

The following additional conditions are necessary to minimize the take authorized by this Permit:

1. The Permittee shall notify the USFWS office in Condition 11.S in writing at least 30 days in advance, but preferably as far in advance as possible, of any expected incidental take of *Moxostoma robustum* under the Permit and CCAA. Such notification will provide the USFWS with an opportunity to relocate affected individuals, if possible and appropriate, thus potentially minimizing the effect of the take.
2. The Permittee shall not use gill nets, trap nets, or other passive sampling gear as part of the activities authorized by this Permit or the CCAA; active sampling gear, including seines, may be used.
3. No activities authorized or contemplated by the CCAA or this Permit shall occur when water temperatures exceed 26 degrees Centigrade, except for radio telemetry studies which may occur at any time unless capture or handling of *Moxostoma robustum* is necessary as part of those studies. If capture or handling of *Moxostoma robustum* is necessary as part of radio telemetry studies, such capture or handling shall not occur when water temperatures exceed 26 degrees Centigrade.

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4. *Moxostoma robustum* sampled from the Permit Area for the purposes of implementing the monitoring provision of the CCAA shall be held for no more than 20 minutes.
 5. Electrofishing power regulator settings shall not exceed 5 amps at 6 to 120 pulses per second when sampling.
 6. All holding tanks (including transport tanks) shall be fitted with an oxygen supply.
- H. This Permit does not authorize the incidental take of any other federally listed plant and/or animal species. In the event other federally listed plant and/or animal species are likely to be adversely affected by the Permittee's actions associated with the CCAA and this Permit, the Permittee will meet with the USFWS office in Condition 11.S to develop appropriate management or other measures that will preclude any unauthorized taking. If activities proposed by the Permittee will unavoidably result in taking of species not covered by this Permit, the Permittee has the option of formally amending this Permit by the procedures outlined in Condition 11.I.
- I. The Permittee and the USFWS agree that modification and amendments to this Permit may occur. The Permit is based upon the Permittee's expected compliance with the provisions of the CCAA and Permit. Where a conflict occurs between the CCAA and this Permit, the Permit shall control.

The following procedures shall govern the modification and amendment process:

1. Either the Permittee or the USFWS may propose modifications and/or amendments to the Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an evaluation of the effects on the proposed modification on the CCAA, this Permit, and the covered species. This analysis shall be conducted jointly between the Permittee and the USFWS office in Condition 11.S. The Permittee and the USFWS will respond in writing to a proposed modification or amendment within sixty (60) days of the notice.
2. 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 USFWS's permit regulations codified at 50 CFR Parts 13 and 17.

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3. The Permittee can terminate the Permit in accordance with the regulations in effect at the time of Permit issuance, now codified in 50 CFR 13.26 and incorporated herein by reference. In the event the Permittee elects to terminate the Permit before the end of its 22-year duration, the Permittee agrees to provide the USFWS with sixty (60) days advance written notice.
- J. The Permittee shall provide adequate funding through the Permit expiration date or other termination. By accepting this Permit, the Permittee warrants that it has and will expend such funds as necessary to fulfill its obligations of this Permit. The Permittee will promptly notify the USFWS offices in Conditions 11.S and 11.T in writing of any material change in its financial ability to fulfill these obligations.
- K. Upon locating a dead, injured, or sick *Moxostoma robustum*, or other species that may be covered by the Permit in the future under circumstances not addressed or authorized by the CCAA or this Permit, the Permittee will notify the USFWS Law Enforcement Office, Savannah Coastal Refuge Complex, 1000 Business Center Drive, Suite 10, Savannah, Georgia 31405, or phone number 912/652-4036 by the next working day. Notification must also be made by the next work day to the USFWS office in Condition 11.S. If further authorized by the USFWS Law Enforcement Office identified above, 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 endangered species or preservation of biological materials from a dead animal, the Permittee must take responsible steps to ensure that the site where a dead or injured specimen is obtained is not unnecessarily disturbed.
- L. Any person who is under the direct control of the Permittee, or who is employed by or under contract to the Permittee for purposes authorized by this Permit, may carry out the activities authorized by this Permit. A copy of this Permit must be carried by the Permittee and all person(s) conducting the activities authorized under this Permit.
- M. The Permittee shall ensure that all *Moxostoma robustum* that are moved to the Permit Area by the Permittee or its cooperators are tagged with tags that are standard for such activities.
- N. The Permittee shall provide monitoring reports to the USFWS as described in Condition 11.O and will meet with the USFWS on an as-needed basis to review the information contained in these monitoring reports. These meetings will provide an opportunity for resolutions of disputes regarding the Permit implementation and to discuss amendments,

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modifications, or adaptive management strategies related to this Permit and the CCAA. Said meetings will be mutually-agreed upon, as will a list of potential attendees and potential discussion topics.

- O. Beginning with the effective date of this Permit and for the duration of this Permit, the Permittee shall submit an annual report by December 31 to the USFWS Offices in Conditions 11.S and 11.T that references Permit TE038547-0 and contains the following:
1. A 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.”
 2. An identification of any material non-compliance of the CCAA or this Permit and all measures employed to remediate such non-compliance.
 3. An accurate map depicting all portions of the Permit Area where *Moxostoma robustum* are released, reintroduced, and/or captured.
 4. A summary of any modifications and/or amendments submitted and approved/denied during the reporting period, including a narrative summary of any changes made to adaptively manage for *Moxostoma robustum* within the Permit Area.
 5. A report of all *Moxostoma robustum* management activities conducted within the Permit Area for the reporting period, including the number, age, and sex (if determinable) of *Moxostoma robustum* released within the Permit Area and an accounting of incidental take events which occurred during the reporting period.
 6. The names and affiliations of all personnel who conducted management activities with the Permit Area for the reporting period.
- P. The Permittee shall notify the USFWS in writing 30 days in advance of any transfer of ownership of Lloyd Shoals Dam (FERC Project 7019).

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- Q. The USFWS agrees to maintain the confidentiality of any information or data submitted by or on behalf of Permittee in the annual report required by Condition 11.N. In addition, the USFWS agrees 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 USFWS 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 USFWS 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 a minimum of twenty-one (21) working days 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 assure that the requesting party will likewise maintain the confidentiality of the information or data with respect to further disclosure.
- R. The Permittee and the USFWS acknowledge that changes in circumstances could arise which were not fully anticipated by the CCAA or this Permit and which may result in substantial and adverse change in the status of *Moxostoma robustum*. When determining whether changed and/or unforeseen circumstances have occurred, the determination will be made based on the USFWS's regulations regarding changed and unforeseen circumstances contained at 50 CFR 17.22(d)(5)(i-iii) and 50 CFR 17.32(d)(5)(i-iii), which are incorporated by reference and also contain the regulatory assurances provided to the Permittee by this Permit.
- S. For purposes of monitoring compliance and administration of the terms and conditions of this Permit, the contact office of the USFWS is:
- Field Supervisor
U.S. Fish and Wildlife Service
247 South Milledge Avenue
Athens, Georgia 30605
Telephone: (706) 613-9493
Facsimile: (706) 613-6059
- T. 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)

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