

CATAWBA-WATEREE HYDRO PROJECT
HABITAT ENHANCEMENT PROGRAM CHARTER

Background

Duke Energy Carolinas, LLC (Duke), the North Carolina Wildlife Resources Commission (NCWRC), and the South Carolina Department of Natural Resources (SCDNR) signed a Memorandum of Agreement (MOA) that created the Habitat Enhancement Program (HEP) as part of Duke's Shoreline Management Plan (SMP) to resolve all issues associated with shoreline development and protection or mitigation for fallen trees of substantial size and density (woody debris) lying within the Project Boundaries of the 11 lakes that comprise the Catawba-Wateree Hydro Project (Federal Energy Regulatory Commission or FERC Project No. 2232 and referred to herein as the "Project"). The United States Fish and Wildlife Service (USFWS) participated in the development of the MOA, but chose not to sign the MOA. The HEP provides an effective means for allowing continued private and public recreational access to Project lakes while also cooperatively enhancing fish and wildlife habitat. The HEP requires individuals applying for a Private Pier permit and Residential Marina developers seeking Duke permits for new structures or to expand or alter existing structures from their originally permitted "footprint", to provide payment to a fund, directed by the HEP Technical Review Committee (TRC), to equitably support fish and wildlife habitat enhancement, creation, and protection activities within and contiguous with the FERC Project Boundaries, and in the Jurisdictional and Enhancement Activity areas (as defined in the MOA).

Purpose of Charter

This charter supplements the MOA by providing operational procedures for the TRC and Lakes Advisory Committee (LAC) in both North Carolina and South Carolina.

HEP Goal

The goal of the HEP is to create, enhance, and protect shallow water fish and wildlife habitat within the Project areas.

Formation and Functions of the TRC and LAC

TRC

Each state will have its own TRC that will:

1. Consist of a minimum of four but no more than six members, appointed by Parties to the MOA, serving a term not to exceed five years, including:
 - a minimum of one but no more than two state wildlife resource agency representatives,
 - one Duke representative,
 - one federal agency representative with wildlife habitat management responsibilities,
 - one at-large representative with wildlife habitat enhancement experience, and

- one at-large representative selected by and from the HEP LAC (typically its chair).
2. Review proposed projects in a fair and equitable manner to determine if they are applicable to the HEP.
 3. Determine by majority vote, with input from the LAC, to approve, approve with modifications or deny a proposed project and determine the level of funding that a proposed project will receive in addition to any Base Funding (see section V. C. in the MOA for a definition of the Base Fund).
 4. Develop any monitoring and reporting requirements and communicate these to the selected funding recipient at the time of funding approval.
 5. Notify all HEP applicants of the status of their proposed projects within 15 days after the TRC makes its decision and develops the monitoring and reporting requirements.
 6. Provide recommendations to Duke to ensure that basic monitoring and reporting is conducted to verify that funds are effectively being used to make the intended improvements.

LAC

Each state will have its own LAC that will:

1. Consist of individuals representing each lake with up to seven members in North Carolina and up to five members in South Carolina with each member being appointed through unanimous agreement of the Parties to the MOA in their state. It is possible that some lakes may not be represented on the LAC due to the lack of potential candidates being readily available. Prospective members of the LAC must apply to the Parties of the MOA in the applicable state for consideration. A Duke employee or contractor will facilitate the LAC meetings and will provide the necessary logistical support. The facilitator will not be a voting LAC member.
2. After considering the technical merits of the proposed projects, advise the TRC on suggested geographical distribution of the projects and the funding to provide appropriate cost-benefit to the lakes from which the funds were collected. Comments from the LAC will be attached to the funding request applications and forwarded to the applicable state TRC for consideration.
3. At least once a year, meet jointly with its corresponding state TRC.
4. Advise the TRC on stakeholder views about the HEP that might affect how the program is managed and funded.
5. Review and advise the TRC on the adequacy of communications with affected stakeholders.

6. Advise the TRC on additional funding sources.
7. Elect by majority vote from its membership (typically its chair) a person to be the at-large representative on the TRC.

Committee Ground Rules

In the interest of providing a cooperative environment, Committee members will treat each other with courtesy and respect, and follow through on commitments and action items.

Committee Membership

1. Initially, TRC and LAC members will serve a five-year term beginning May 1, 2007, with reappointment for subsequent three-year terms being possible.
2. However, all subsequent Committee members will serve three-year terms.
3. The Parties to the MOA will solicit and appoint candidates for the initial TRC and LAC positions prior to the first meeting.
4. The respective resource agencies and Duke will appoint subsequent representatives to the TRC prior to the expiration of the existing TRC member's term.
5. Subsequent appointments to the LAC will be made by the TRC prior to the expiration of the existing TRC and LAC members' terms.

TRC Criteria for Committee Appointment and Position Retention

To obtain an appointment and retain that appointment, a Committee member must:

1. Remain employed by or have authorization to represent the agency, company, or organization that appointed them.
2. Have an interest in fish or wildlife habitat.
3. Have knowledge of local and regional fish or wildlife habitat needs and issues.
4. Have substantial training or expertise in the types of activities identified for funding in the MOA (*except for Members-at-Large*).
5. Members-at-Large must continue to represent the interests stated in the application for Committee membership.

LAC Criteria for Committee Appointment and Position Retention

To obtain an appointment and retain that appointment, a Committee member must:

1. Remain associated with the interests stated in the application for membership.

2. Have an interest in fish or wildlife habitat.
3. Have knowledge of local and regional fish or wildlife habitat needs and issues.

Responsibilities of Committee Members, Parties, and Participants

Organizational Representation

Committee members are representatives from their respective organizations or interest areas. Thus, it is their responsibility to keep their organization or interest area constituents updated regarding the progress and decisions on HEP funding.

Meeting Attendance and Preparation

1. The TRC and LAC in each state will meet jointly at least once during each calendar year during the life of the MOA beginning in 2007.
2. Committee members are expected to participate in all scheduled Committee meetings. In the event of an emergency, a Committee member may select an alternate representative by contacting the Committee chair prior to the meeting. If a Committee member is absent for two consecutive meetings without selecting an alternate representative, they will be excused from the Committee and replaced by a TRC approved representative from the same organization or interest area.
3. Committee members are expected to have read and evaluated all materials that are planned for discussion at the upcoming meeting (including but not limited to funding applications, meeting summaries, and reports) and be prepared to comment on the materials.

Expectations of the TRC and LAC

Proposals requesting funding for habitat enhancement, creation, and protection activities will be reviewed by the TRC with input from the LAC.

1. The TRC will develop a funding proposal application to ensure adequate information is provided to evaluate the merits of each proposal.
2. Each committee will annually elect a chair, and other officers (e.g., secretary) as needed, by majority vote.
3. Each committee will evaluate funding proposals at least once annually.
4. Each committee will be provided complete applications that include accurate information regarding each funding proposal including, at a minimum, project begin and end dates, a detailed scope of work, identification of parties responsible for implementation including construction (if any) and long-term maintenance, estimated costs (Note: Final costs at the end of implementation will be reviewed during the committee's review meeting),

locations, and other supplemental information that may assist the committees in their review and evaluation, including but not limited to any necessary landowner approvals.

5. Each committee will develop coordinated “talking points” for use with the media. Each committee will communicate consistently to the media and other public bodies regarding habitat enhancement activities and funding decisions. When speaking to the media or other public bodies regarding the HEP, committee members will not state their opinion on any position of other committee members.

Expectations of the TRC Chair

1. Review applications for completeness following application receipt. Incomplete applications will be returned to the applicant explaining the deficiencies in writing.
2. Provide complete applications to other TRC members and the LAC Chair (as soon as possible following closure of the application submittal period) for review and comment.
3. Communicate to the HEP applicants the TRC’s decision whether to approve, approve with modifications, or deny the application within 15 days after the Committee makes its decision and develops the monitoring and reporting requirements.
4. Monitor online the fund balance and ensure that the required minimum threshold fund (i.e., \$5,000 per state account) is maintained at all times and that funding awards are not made that would reduce the fund balance below the minimum required balance.
5. Provide annually by January 31 to the applicable TRC and LAC members, and the fiduciary entity, a brief report available to the public that describes enhancement activities utilizing funds from the HEP that were conducted during the previous calendar year. The report will identify each funded activity by lake, location, total expenditure, and expenditure during the subject calendar year, and will also provide summaries of significant successes or failures and lessons-learned for each activity in accordance with any monitoring plans as stipulated in the HEP funding application approval.
6. Provide logistical support (e.g., distribute proposals, develop agendas, schedule meetings, assist with meeting summaries, etc.) or arrange this support for TRC meetings and determine if a quorum (one less than the total number of committee members) is present for conducting Committee business.

Expectations of the LAC Chair

1. Provide completed applications to the entire LAC within 15 days after receipt from the TRC Chair.
2. Provide to the TRC Chair suggestions and comments on reviewed applications by the deadline established by the TRC Chair.
3. Report to the LAC the final funding decisions of the TRC.

4. Work cooperatively with the LAC Facilitator to ensure that all the above actions are accomplished in a timely manner.

Expectations of the LAC Facilitator

1. Cooperatively work with the LAC Chair to provide necessary logistical support.
2. Function as the liaison between the TRC and LAC, as needed.

Expectations of Duke

Duke agrees to:

1. Provide a total of \$160,000.00 per year to the Base Fund to support the HEP. An \$80,000.00 per year portion of the total will be allotted to each state and will be deposited directly into separate HEP fund accounts administered by a fiduciary entity acceptable to the Parties of the MOA. Both portions of the \$160,000.00 will be provided each year beginning in 2005 and continuing through and including 2009.
2. Require applicants seeking Duke permits for new Residential Marinas and Private Piers or to expand or alter existing structures from their originally permitted "footprint", be subject to the requirements of the HEP when submitting applications (including application filing fees) post-marked after January 1, 2005, and March 1, 2005, respectively.
3. Apply the HEP fee to all applicable Private Pier and Residential Marina (on a per slip basis) expansions, alterations, or new construction.
4. Apply the HEP fee to all applicable non-permitted structures that are required to come into compliance with the SMP Guidelines.
5. Require applicable facility expansions to be subject to a pro-rated HEP fee based on the square footage of the permitted expansion.
6. Require payment of the HEP fee if an applicable facility must be rebuilt as a result of notification by Duke that a facility has become a public safety or navigational hazard.
7. Administer and enforce compliance with the HEP.
8. Provide the HEP fee collections to the fiduciary entity as the applicable lake-use permit applications are approved throughout the year. (Note: For an individual Private Pier, Duke's approval is evidenced by the applicant's receipt of a signed approval letter from Duke. For a Residential Marina facility, approval is evidenced by a Project area lease or permit agreement that is signed by both the applicant and Duke).
9. Provide a report annually by January 31, to the NCWRC, the SCDNR, the USFWS, the TRC Chair, and the LAC Chair that identifies the total number of individual Private Piers

and Residential Marina slips approved by Duke during the previous calendar year, with the approvals segregated by lake and state.

10. Continue to recommend to any property owner adjoining the Project Boundaries that they voluntarily leave existing woody debris along the shoreline of their property and utilize less-hardening shoreline stabilization techniques, where practical.
11. Identify and allow the establishment of new areas meeting general criteria for woody debris in protected locations (e.g., selected Duke-owned islands) in cooperation with the state wildlife resource agency and utilizing funding approved by the TRC.
12. Utilize selected Duke-owned islands for the dual purpose of allowing continued public recreation opportunities, and the creation, enhancement, and protection of fish and wildlife habitat.
13. To the maximum extent allowed by law, not communicate to the FERC or to any other federal, state or local agency or any other entity any comments, conditions or recommendations that are inconsistent with the terms of the MOA and the Comprehensive Relicensing Agreement (CRA) or that if followed or adopted by the FERC as part of a New License, could represent a diminished cost and/or management and/or monitoring obligation for Duke relative to woody debris or structural fish habitat (except for any fish habitat issues arising from Endangered Species Act, water quality, or in-stream flows) beyond what is required by the MOA or the CRA.
14. Maintain the responsibility to ensure the administrative functions (e.g., calling meetings, providing agendas, developing meeting summaries, etc.) of the TRC and LAC are accommodated. These functions can be shared among committee members, but it remains Duke's responsibility to ensure these functions are fulfilled. Duke will also provide a representative to serve as the LAC Facilitator.

Expectations of the NCWRC and the SCDNR

The NCWRC and the SCDNR agree to:

1. Cooperatively work with Duke to establish appropriate habitat enhancement areas along the shoreline of selected Duke-owned islands and public recreation areas.
2. Provide cash or cash-equivalent in-kind services annually to the HEP.
3. Determine, based on logistical concerns, when each state's program and enhancement activities will begin.
4. Acknowledge the HEP as an adequate measure to resolve all the NCWRC's and SCDNR's concerns as to the Project regarding woody debris and structural fish habitat (except for any fish habitat issues arising from Endangered Species Act reviews, water quality certifications, or the provision of in-stream flows).

5. To the maximum extent allowed by law, not communicate to the FERC or to any other federal, state or local agency or any other entity any comments, conditions or recommendations that are inconsistent with the terms of the MOA and the CRA or that if followed or adopted by the FERC as part of a New License for the Project, could represent an additional cost and/or management and/or monitoring obligation for Duke relative to woody debris or structural fish habitat (except for any fish habitat issues arising from Endangered Species Act, water quality, in-stream flows) beyond what is required by the MOA or the CRA.

Mutual Expectations

It is mutually agreed by all Parties to the MOA that:

1. The Base Fund consists of the Duke contributions, HEP fees, and agency contributions. A portion of the Base Fund will be devoted to the NCWRC and SCDNR to support their HEP-related projects; funds exceeding the NCWRC and SCDNR administered HEP-related project requirements, will be available for habitat enhancement requests from others (i.e., other government agencies or tax-exempt organizations other than the NCWRC and SCDNR) on a grant basis. It is possible that Duke (by partnering with a government agency or a tax-exempt organization) can also receive project funding from the HEP.
2. The Parties to the MOA will review the effectiveness of the MOA and HEP (including fees and funding) prior to the end of 2009 and every 5-years thereafter for the program life as noted in Item V. E. of the MOA. This review will provide the opportunity to determine if modifications are necessary. If modifications are needed, the MOA and HEP can be revised or terminated only upon mutual written agreement of all Parties to the MOA, except as provided for in V. I. and V. J. of the MOA, or if the MOA is contrary to state law, no Party is obligated to agree to any revision or termination proposed by any other Party.
3. The MOA and HEP will remain in force throughout the term of the Existing License (i.e., through August 31, 2008, or for a longer period if the Existing License is extended by the FERC with an annual license(s)) for the Project and continuing for the term of the New License (i.e., the license that the FERC is expected to issue for a term of 40 to 50 years in accordance with the CRA).
4. The Parties will work in partnership to promote the HEP and its benefits to the fish and wildlife community in discussions with other resource management agencies, adjoining property owners, land developers, governments, elected officials, non-governmental organizations, anglers, and the general public.
5. In the event that a FERC order regarding the MOA and/or the HEP does not approve implementation of any of the provisions referenced in the MOA, the Parties agree to promptly confer to determine what, if any modifications to the MOA should be made to address the issues raised.

6. In the event that a FERC order regarding the MOA and/or the HEP requires additional activities, including but not limited to specifically protecting woody debris beyond the protection contemplated in the MOA, then Duke in its sole discretion may terminate the MOA.
7. In the event that the NCWRC or the SCDNR determines that the funding is not adequate to support a state habitat enhancement program, or otherwise chooses to not continue to participate in the HEP, that state may withdraw from the MOA after giving a 30-day notice to the remaining Party(ies), except Duke may continue to administer the HEP based upon the MOA, as the sole Party to the MOA, and if so, Duke will be afforded the functions listed in B.5 and B.6 of the MOA.
8. Each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other Parties and the results thereof. Each Party agrees that it assumes all risk for itself, its agents or employees for any loss, cost, damage, or expense resulting from occupying or visiting the premises under and pursuant to the MOA and/or the HEP.

Funding Mechanism

1. Duke opened two accounts in 2004 at the Foundation for the Carolinas with \$5,000.00 in each state account. These funds will be used as the “minimum threshold base funds” to keep the account open and active.
2. Duke will provide \$160,000.00 per year for the first five years (i.e., 2005 through 2009) of the program. These funds will be equally distributed (\$80,000.00/state) to both North Carolina and South Carolina.
3. Funds will be generated through payment by individuals applying for a Private Pier permit (\$250) and Residential Marina developers (\$250/slip) seeking Duke permits for new structures or to expand or alter existing structures from their originally permitted “footprint.”
4. In addition, Duke may provide additional funds to these established accounts as referenced in the CRA.

HEP Application Evaluation Process

1. The TRC will accept only online funding proposals from government agencies and tax-exempt 501(c)(3) organizations annually from May 1 through July 31 beginning in 2007. Individuals and private companies will have to partner with either a government agency or a tax-exempt organization to apply for funds.
2. The HEP funds will be limited to:
 - protection, enhancement, or creation of additional fish and/or wildlife habitat within the Jurisdictional and Enhancement Activity Areas as approved by the applicable TRC,

- reimbursement for additional voluntary habitat enhancement, creation or protection (e.g., fish-friendly piers, fish attractors, etc.) with first consideration being given to more comprehensive habitat creation efforts as identified as part of any resource agency wildlife or fisheries management plan or part of the Catawba River Basin Natural Resources Plan in North Carolina or the South Carolina Catawba River Corridor Plan and,
 - recovery costs for legal expenses incurred for HEP compliance not to exceed \$10,000.00 per occurrence.
3. The TRC will develop and utilize standard criteria in their evaluation. These criteria will be consistent with the documents referenced above. The scoring criteria will be available to the public by May 1, 2007.
 4. The TRC will determine the total funds awarded each year and may decide to award funds in a different amount than requested by the applicant.
 5. Each complete application will be given fair and equitable consideration.
 6. Funds for successful proposals will be available in the fall and may be released at the TRC's discretion by one of the following methods:
 - lump sum to the applicant once the proposal has been approved,
 - provide 50% of the total approved funding when the proposal has been approved and remainder of the funds once work is complete, or
 - reimbursed to the applicant only upon project completion.
 7. Duke will advise the fiduciary entity to release funds to applicants with TRC-approved projects.
 8. The TRC will include stipulations in the approval letter on the use of the funds, target completion date for the work, and reporting requirements for the applicant upon completion of the project.
 9. The applications and additional information on the HEP are available online at www.duke-energy.com.

Changes to the Charter

This charter can be modified as determined necessary by the TRC in each state. Since these Committees will use the same charter, any changes that are proposed must be approved by at least 60% of the membership of each TRC.