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**SHORELINE MANAGEMENT PLAN
(SMP)
FISH AND WILDLIFE HABITAT
ENHANCEMENT STUDY (SMP03)
REPORT**



May 2005



General

The Federal Energy Regulatory Commission (FERC) ordered implementation of a habitat enhancement funding program via the revised SMP on October 15, 2003. The basis of the Fish and Wildlife Enhancement Study (SMP03) was initially to develop a plan for making actual enhancements. The original study plan envisioned considering the results of fish and wildlife habitat inventories conducted in other relicensing studies and the development of specific plans for each reservoir. This study plan, however, was modified and the study team composition was expanded to address specific concerns regarding the initiation of the Habitat Enhancement Program.

Background

The Habitat Enhancement Program (HEP) Memorandum of Agreement (MOA) entered into by the North Carolina Wildlife Resources Commission (NCWRC), South Carolina Department of Natural Resources (SCDNR) and Duke Power was developed to address issues regarding woody debris and structural, shallow water fish habitat. The HEP was developed to generate funding from the Private Facilities and Commercial/Residential Facilities Permitting programs to support habitat enhancement activities within the Project boundary; all Duke-owned islands in the vicinity of the Project; all Duke-owned Public Recreation Areas in the vicinity of the Project; all land and water areas contiguous with the Project boundary and the river stretches in the Catawba Basin in the counties bordering the C-W Project and for which the written permission of the landowner to make fish and wildlife habitat enhancements on their property has been obtained.

The roots of the Habitat Enhancement Program go back to 1996, when the Federal Energy Regulatory Commission (FERC) directed Duke Power to update its Shoreline Management Plan (SMP) every five years, and identify important fish and wildlife habitats. Woody debris (fallen trees in significant numbers and size along the shoreline) was only one of a number of habitats identified. To better address the loss of shoreline habitat, a partnership entitled the Habitat Enhancement Program was formed among Duke Power, NC Wildlife Resources Commission, SC Department of Natural Resources and the US Fish and Wildlife Service. The program was implemented in December 2003 and required applicants who were building, rebuilding or expanding Private/individual piers and Commercial/residential facilities to make a payment of \$500 for an individual pier or \$500 per slip for commercial/residential facilities as a way to fund enhancement initiatives. The funds would then be used for activities that support fish and wildlife habitat creation, enhancement and protection along the Catawba-Wateree reservoirs and offset the displacement of woody debris habitat (for fish and wildlife).

Following the HEP implementation, questions began to arise about the fee structure of the program. A moratorium was placed on the fee collection portion of the program by the HEP partnership until a comprehensive review and additional public comment could occur. During this input and review period (i.e. moratorium) all HEP payments that were collected were refunded.

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The Catawba-Wateree Hydro Relicensing efforts, although separate from the Habitat Enhancement Program developed as part of the Shoreline Management Plan, had a Wildlife Habitat Enhancement Study Plan initiative in place which shared similar interests in the issue of improving wildlife and fish habitats. The initial study plan was modified to provide an efficient mechanism for allowing a broad range of public input from within the basin to address the HEP issues. One of the primary goals of the study plan then became to review and provide input for the revision of the HEP and associated fee structure. The composition of the study team changed and relicensing team stakeholders that expressed an interest in participating on the study team were asked to make a time commitment to complete this work or suggest candidates within their organization that would be interested in participating on the study team. The study team held a series of five meetings from August 2004 through October 2004 to renegotiate the specifics of the HEP.

Certain habitats such as vegetated areas and stream confluences are especially important to fish and wildlife for many of their life functions. Other important areas such as areas with significant stable sand and cobble are natural components of the local geology. These important habitat types have been identified in the SMP and classified to provide varying degrees of protection based on their importance as shallow water fish habitat.

The Need for the HEP

Woody debris is important to a wide variety of fish and wildlife species. It is used by birds, reptiles and amphibians as basking and feeding areas. It provides resting and escape cover for fish and turtles. Woody debris provides structure for microscopic plants and animals that form the base of the food chain in addition to providing a source of carbon and nutrients. Woody debris, however, is very sparse on most reservoirs and is subject to removal by adjoining landowners. Woody debris is one of the least abundant habitats in reservoirs on the Catawba-Wateree River. Unlike sand and cobble, the abundance of woody debris is directly influenced by shoreline activities, such as pier and dock installation.

The majority of the shoreline of the reservoirs within the Catawba-Wateree Project are composed of clay banks with very little naturally-occurring structure and aquatic vegetation that is important to fish and wildlife. Therefore, it is important to not only protect the existing habitats but to promote enhancement activities that contribute to habitat diversity not only on a reservoir basis but for the Project as a whole and areas within the vicinity of the Project.

HEP Modification

The original SMP03 study team (see Appendix A – SMP 03 Study Team Roster) consisted of ten members but was expanded to 27 to ensure that additional public input was provided in any revision to the HEP. During the three months of discussion and negotiation several significant areas for re-evaluation were addressed including: 1) fee amount(s); 2) Technical Review Committee composition; 3) varying fee amounts based on certain lake use permitting activities; 4) regional and lake specific input through a Lake Advisory Committee; 5) increased financial and/or in-kind contributions by Duke

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Power and the state wildlife resource agencies to support the program during the initial five years of the program's life, including base funding requirements; and 6) no required payments for pier rebuilds of structures within the footprint of the original facility.

Reinstatement of the HEP was communicated externally to the six relicensing stakeholder teams, lake construction contractors and facility applicants. The HEP was reinstated on January 1, 2005, and a two-month grace period from January – February was provided before fund payments resumed March 1, 2005. The brochure (see Appendix B – Working Together to Enhance Lake Habitat) that was originally developed to assist in communicating the HEP was also modified to reflect the negotiated changes to the program, reprinted, and is currently being distributed in all pier and commercial marina application requests.

The revised Memorandum of Agreement (MOA) (see Appendix C- Memorandum of Agreement) between Duke Power and the NCWRC and SCDNR is intended to be executed among all parties and filed with the FERC. It is also anticipated that funded habitat enhancement activities will begin to take place in late 2005 or early 2006. Enhancement activities that comply with the enhancement activity area criteria included in the MOA and are part of any fish and wildlife management plans developed by the state wildlife resource agencies will be the highest priority activities to be conducted utilizing funds from the program.

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APPENDICES

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APPENDIX A – SMP03 Study Team Roster

<u>SMP03 Study Plan members</u>	<u>Name</u>	<u>Agency</u>
Team lead	Joe Hall	Duke
SMP03	Mark Cantrell	USFWS
SMP03	Vicki Taylor	CWRC
SMP03	Chris Goudreau	NCWRC
SMP03	Dick Christie	SCDNR
SMP03	Tim Gestwicki (Richard Mode)	NCWF
SMP03	Hugh Barwick	Duke
SMP03*	Scott Fletcher	DTA
SMP03*	Amanda Hill	USFWS
SMP03*	Steve Arnold	DTA
SMP03*	Eric Jenkins	L. James Envir. Groups
SMP03*	Pres Brownell	NMFS
SMP03	Steve Johnson	Duke
Mtg participant	Jason Walls	Duke Power
SMP03	George Galleher	Duke Power
Mtg participant	Mark Oakley	Duke Power
Mtg participant	Rick Rhodes	Duke Power
SMP03	Greg Robison	Duke Power
SMP03	Shorty Gibson	WHOA (Kershaw)
SMP03	Bill Hubert	WHOA (Fairfield)
SMP03	Randy Humphries	WHOA (Fairfield)
SMP03	Sue McCauley	Wylie Covekeepers

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SMP03	Steve Oakley	Paradise Pt. Homeowners
SMP03	Ken Paschall	The Herald Independent
SMP03	Ivy Robichaux	Robichaux Outfitters Inc
SMP03	Ron Montgomery	Lake Wylie Marine Commission
Mtg facilitator	Ken Kearns	Kearns and West
Mtg participant	Donna Lisenby	Catawba Riverkeeper

*Original SMP03 study team member that did not participate in HEP reinstatement discussions.

APPENDIX B - Working Together to Enhance Lake Habitat (Text)

Working Together to Enhance Lake Habitat

You are living near one of the most precious resources on earth — water! Here, where the water meets the land, you'll find a world teeming with life and beauty. This area, where water and land touch — called the riparian zone — provides valuable habitat for plants and animals.

Over the past decades, this riparian zone has been altered by clearing of the natural vegetation, mowing, shoreline stabilization, etc., changing the availability and diversity of the habitat for a variety of fish and wildlife. One of the more important habitats is the shallow-water habitat for fish and wildlife. Most kinds of fish and wildlife like structure (e.g., rocks, vegetation, woody debris and man-made structures such as piers) and are attracted to it. Wildlife like turtles, muskrats and waterfowl also use these kinds of habitat for feeding and breeding areas. Such structure provides fish and wildlife with a diversity of habitats that is generally limited naturally in most reservoirs.

In accordance with Duke Power's Federal Energy Regulatory Commission license to operate hydroelectric stations on the Catawba-Wateree Hydroelectric Project and its existing Shoreline Management Plan, the North Carolina Wildlife Resources Commission, South Carolina Department of Natural Resources, United States Fish and Wildlife Service and Duke Power have formed a partnership to develop habitat management strategies that will improve the habitat for fish and wildlife in and adjacent to Duke Power operated reservoirs.

Habitat Enhancement Program

As part of the habitat management strategy, a "Habitat Enhancement Fund" has been set up to provide for habitat enhancement activities that will create, protect and enhance the fisheries and wildlife habitats in and around the Catawba-Wateree reservoirs. This fund will be supported from payment by applicants seeking a permit to build a new structure or modify the "footprint" of an existing approved structure.

- **Individual private pier applicants – \$250/pier**
- **Commercial/Residential facility slip applicants – \$250/slip**

The habitat enhancement fee and the pier/facility permit application filing fee will be collected by Duke Power upon submittal of a Private Facilities or Commercial Facilities application. Applicants should write two checks; one check to Duke Power for the application filing fee and the other check to the Habitat Enhancement Fund. Non-payment will result in the denial of the pier/facility permit.

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All Habitat Enhancement Program payments will be administered by the Foundation for the Carolinas, a Charlotte-based organization serving the philanthropic needs of the Carolinas for over 40 years.

Funds collected in North Carolina will be used for enhancement activities in the vicinity of the Catawba-Wateree lakes in North Carolina. Funds collected in South Carolina will be used for activities in the vicinity of the Catawba-Wateree lakes in South Carolina. Any agency, organization or individual may apply for funding to protect, create and/or enhance fish and wildlife habitat. Fish and wildlife habitat enhancement, and creation and protection activities are to be within and contiguous with the Project boundary, the Duke-owned islands, Duke-owned public recreation areas and the regulated river stretches between the Catawba-Wateree Project developments in the counties occupied by the Catawba-Wateree Hydro Project. For information on submitting a proposal for habitat enhancement activity funding, contact Duke Power at 1-800-443-5193.

A Habitat Enhancement Technical Review Committee for each state will review and evaluate each proposal seeking monetary support from these funds.

In addition to the Technical Review Committee, the Habitat Enhancement Program will include Lakes Advisory Committee that will provide additional input to the Technical Review Committee on the selection of habitat enhancement proposals. Proposals approved by these committees will be awarded funds to support habitat enhancement activities. A Habitat Enhancement Program activity report will be available to the public each year describing which enhancement activities were approved and supported by the fund. The Habitat Enhancement Program will be reviewed every 5 years for improvements, fee rate evaluation and for any other modifications.

The goal of this program is to provide an effective means of allowing continued private recreational access while providing meaningful habitat creation, enhancement and protection activities for fish and wildlife adjacent to the Catawba River and its reservoirs.

Thank you for your cooperation in helping make this happen so that in the future we can all continue enjoying the fish and wildlife resources of the Catawba River.

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APPENDIX C – Memorandum of Agreement

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**Memorandum of Agreement Concerning
Habitat Enhancement and Woody Debris Management for the
Catawba-Wateree Hydro Project**

I. PARTIES

This Memorandum of Agreement (MOA) is made and entered into by and between the North Carolina Wildlife Resources Commission (the “**NCWRC**”), an agency of the state of North Carolina; the South Carolina Department of Natural Resources (the “**SCDNR**”) an agency of the state of South Carolina; hereafter referred to collectively as the “**State Agencies**”; and Duke Power (“**Duke**”), a division of Duke Energy Corporation, a North Carolina corporation. Collectively, the State Agencies and Duke are hereinafter referred to as the “**Parties**”.

II. PURPOSE

Duke operates the Catawba-Wateree Hydro Project under a license from the Federal Energy Regulatory Commission (FERC). This MOA resolves all matters relative to the Catawba-Wateree Hydro Project (FERC No. 2232) (the” **Project**”) regarding woody debris and structural, shallow water fish habitat ,and complies with the FERC’s Order Modifying and Approving Revised Shoreline Management Plan (Project No. 2232-428) issued October 15, 2003, which included ordering paragraph (D) that stated, “The licensee shall implement the Habitat Enhancement Program established as a part of the Memorandum of Agreement Concerning Habitat Enhancement and Woody Debris Management for the Catawba-Wateree Hydro Project (MOA).”

III. SCOPE OF WORK

Duke and the State Agencies desire to provide an effective means of allowing continued private and public recreational access to the Project as well as cooperative habitat enhancement by implementing the Habitat Enhancement Program (the “**HEP**”). In general, the HEP requires both individuals applying for a private pier permit and Commercial/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 (the “**TRC**”), to equitably support fish and wildlife habitat enhancement, creation and protection activities within and contiguous with the Project Boundary, and other areas listed below.

A. Jurisdictional Area:

Except as exempted herein, this MOA shall apply to:

- All land and water areas of each respective reservoir (see Table 1) that lie within the Project Boundary and thus are under the jurisdiction of the FERC (i.e. generally, the full pond contour elevation of each reservoir, expressed in feet above Mean Sea Level (MSL), except as noted otherwise in the FERC License).

B. Enhancement Activity Areas:

Includes the Jurisdictional Area and additional areas within which enhancement activities may be conducted including:

- All Duke-owned islands in the vicinity of the Project.
- All Duke-owned Public Recreation Areas in the vicinity of the Project.
- All land and water areas contiguous with the Project Boundary and / or the Catawba-Wateree River in the counties as noted in Table 1, and for which the NCWRC or the SCDNR or the TRC-approved applicant has obtained the landowner’s written permission to make fish and wildlife habitat enhancements on their property.

Table 1. Summary of Catawba-Wateree Hydro Project Reservoir Characteristics

Reservoir	Full Pond Contour (FT Above MSL)	Reservoir Surface Area (acres)	Shoreline Miles*	Island Shoreline Miles**	Island Acreage**	County/State
James	1200.0	6,577	151.5	5.7	112	Burke/McDowell, NC
Rhodhiss	995.1	3,021	103.9	1.3	14	Burke/Caldwell, NC
Hickory	935.0	3,941	110.6	1.1	4	Alexander/Burke/Caldwell/Catawba, NC
Lookout Shoals	838.1	1,208	36.3	4.0	48	Alexander/Catawba/Iredell, NC
Norman	760.0	31,984	591.6	25.4	303	Mecklenburg/Iredell/Catawba/Lincoln, NC
Mountain Island	647.5	2,914	86.5	4.3	61	Mecklenburg/Lincoln/Gaston, NC
Wylie	569.4	12,149	327.5	13.0	152	Gaston/Mecklenburg, NC; York, SC
Fishing Creek	417.2	3,191	67.1	7.0	92	Lancaster/Chester, SC
GreatFalls- Dearborn	355.8	354	16.0	4.5	9	Chester/Lancaster, SC
Cedar Creek	284.4	666	21.0	9.7	139	Chester/Lancaster/Fairfield, SC
Wateree	225.5	12,891	214.9	7.7	93	Lancaster/Kershaw/Fairfield, SC
Total		78,896	1,727	83.7	1,027	

* Estimate includes reservoir shoreline and island shoreline miles.

** Includes Duke-owned and privately owned islands

C. Exempt Areas:

Areas for which Duke holds fee simple title or a leasehold interest (e.g. power station and substation properties, dam properties, power line rights-of-way, etc.), the clearing of which is necessary or desirable to support Duke’s regulatory requirements as to hydroelectric operations and/or its electric business are specifically exempted from this MOA at the sole discretion of Duke.

D. HEP Technical Review Committee(s) (the “TRC”) and HEP Lakes Advisory Committee(s) (the “LAC”)

The LAC in each state will be given the opportunity to review and comment on requests for HEP funding and the LAC’s comments will be attached to the funding request applications and forwarded to the applicable state HEP TRC. The HEP TRC in each state will review and approve all HEP funding request applications in that state.

HEP Technical Review Committee(s) TRC

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Each state will have its own HEP Technical Review Committee. Funding for habitat enhancement, creation and protection activities will be reviewed and approved by the HEP TRC in each state. The TRC in each state will:

- Consist of a minimum of four (4) members but no more than six (6) members, appointed by the Parties of this MOA, serving a term not to exceed five (5) years, including:
 - a minimum of one (1) but no more than two (2) state wildlife resource agency representatives,
 - one (1) Duke representative,
 - one (1) federal wildlife resource agency representative,
 - one (1) representative at large with wildlife habitat enhancement experience, and
 - one (1) at-large representative selected by [from] the HEP LAC (typically its chair) from each state.
- Review proposed projects in a fair and equitable manner to determine if they are applicable to the HEP.
- Develop and approve a charter, prior to the Foundation for the Carolinas distribution of money collected from HEP Fund payments, to more specifically describe the appropriate habitat enhancement area establishment goals, the Committees' operation, and the administrative procedures for managing the HEP Fund.
- Determine by majority vote, with input from the LAC, to approve, approve with modifications or deny, the level of funding in addition to any Base Funding (see section V. c. for a definition of the Base Fund), a proposed project will receive.
- Notify all HEP applicants of the status of their proposed projects within 15 days after the TRC makes its decision.
- Develop any monitoring and reporting requirements and communicate these to the selected funding recipient at the time of funding approval.
- 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.

HEP Lakes Advisory Committee(s) (LAC)

Each state will have its own HEP Lakes Advisory Committee. The LAC in each state will:

- Consist of an individual representing each lake with seven (7) members in North Carolina and five (5) members in South Carolina with each member being appointed by the Parties of this MOA.

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Prospective members of the LAC must apply to the Parties of the MOA for consideration.

- At least once a year, meet jointly with its corresponding state TRC and the MOA Parties to:
 - Review and comment on the projects submitted to and recommended by the TRC for funding.
 - 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.
 - Advise the MOA Parties and the TRC on stakeholder views about the HEP that might affect how the program is managed and funded.
 - Review and advise the MOA Parties on the adequacy of communications with affected stakeholders.
 - Advise the MOA Parties on additional funding sources.
 - Elect from its membership (typically its chair) a person to be the at-large representative on the TRC.

- Have initial TRC and LAC members serve a term of five years, beginning January 1, 2005, with reappointment for a subsequent three-year term(s) being possible. However all subsequent Committee members will serve three-year terms. The respective resource agencies and Duke will appoint their new representatives to both the TRC and LAC prior to the expiration of the existing TRC and LAC member's term. The Parties to the MOA will solicit candidates for the new TRC positions and the LAC positions prior to the Parties first meeting. Parties to the MOA will review the list of candidates and appoint the new LAC and TRC positions at the Parties' first meeting. Subsequent appointments to the TRC positions and the LAC positions will be made by the TRC prior to the expiration of the existing TRC and LAC members' terms.

IV. FUNCTIONS

A. Duke

Duke agrees to:

1. Provide a total of \$160,000.00 per year for the Base Fund to support the HEP. An \$80,000.00 per year portion of the total will be provided directly to the SCDNR and the \$80,000.00 per year North Carolina portion of the total will be deposited directly into the HEP fund for North Carolina. Both portions of the \$160,000.00 will be provided each year beginning in 2005 and continuing through and including the 2009 contributions.

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2. Require both, individuals applying for a private pier permit and Commercial/Residential marina developers, seeking Duke permits for new structures or to expand or alter existing structures from their originally permitted “footprint”, to be subject to the requirements of the HEP if they submit an application (including application filing fees) post-marked after January 1, 2005, for Commercial/Residential slips and March 1, 2005, for private piers.
3. Apply the HEP fee to all new private pier construction and Commercial/Residential slips (on a per slip basis).
4. Apply the HEP fee to all non-permitted structures that are required to come into compliance with the Shoreline Management Guidelines.
5. Require rebuilds that are expanded 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 a 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 Foundation for the Carolinas 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 Commercial/Residential 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 and the United States Fish & Wildlife Service (USFWS), including the total number of individual private piers and Commercial/Residential 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 Boundary that they voluntarily leave existing woody debris along the shoreline of their property and utilize less-hardening shoreline stabilization techniques, where practical, that allow woody debris to remain along the shoreline.
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.

B. NCWRC and SCDNR

The NCWRC and SCDNR agree to:

1. Cooperatively work with Duke in establishing appropriate habitat enhancement areas along the shoreline of selected Duke-owned islands and public recreation areas.

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2. Provide cash or cash-equivalent in-kind services annually to the HEP beginning in 2005 and continuing through 2009.
3. Determine, based on logistical concerns, when each state's program and enhancement activities will begin, with the understanding that it is not anticipated that the HEP will be funded to appropriate levels prior to July 1, 2005.
4. Provide annually by January 31 to the applicable TRC and LAC, and the Foundation for the Carolinas, a brief report available to the public that describes enhancement activities utilizing funds from the HEP that were conducted in that state 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.
5. 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, in-stream flows).
6. 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 this MOA or that if followed or adopted by the FERC as part of a New License, could represent an additional 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 this MOA.

C. USFWS

The USFWS was provided the opportunity to participate in and actually participated in certain aspects of development of the habitat classifications, lake use restrictions, Shallow Water Fish Habitat Survey, HEP, and an additional five Duke-sponsored initiatives to address the woody debris and habitat diversity issues. Although invited to participate in the informal discussions leading to this MOA, the USFWS chose not to become a Party to the MOA.

V. MUTUAL AGREEMENTS

It is mutually agreed by all Parties that:

- A. It is with sincere gratitude that the partnership (NCWRC, SCDNR and USFWS) in this effort recognizes the hard work of each individual that participated on the HEP study sub-team (SMP03). Modification of the HEP, based on the work of the sub-team, is an integral part of ensuring the future of this very significant program.
- B. Delivery of the Duke contribution to the HEP Base Fund for each state will begin on mutual agreement between Duke and the states.

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- C. The Base Fund consists of the Duke contribution portion, HEP fees, and agency portions totaling approximately \$200,000.00 per year. 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. entities other than the NCWRC and SCDNR) on a grant basis. Note that Duke or the USFWS can receive project funding grants from the HEP.
- D. The Parties to this 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. below. This review will provide the opportunity to determine if modifications are necessary. This MOA can be revised or terminated only upon mutual written agreement of all Parties hereto, except as provided for in V. I and V. J, or if the MOA is contrary to state law, and no Party is obligated to agree to any revision or termination proposed by any other Party.
- E. This MOA will remain in force throughout the term of the Existing License for the Project (including as may be extended by annual licenses) and continuing for 20 years following Duke's acceptance (i.e. all challenges have been resolved and the period for all challenges has expired) of the New License to be issued by the FERC for the Project or any of its hydro developments following expiration of the Existing License.
- F. 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.
- G. The distribution of HEP funding grants will be limited to:
- i. Protection, enhancement, or creation of additional fish and/or wildlife habitat within the Jurisdictional and Enhancement Activity Areas as approved by the applicable TRC and cost recovery for legal expenses incurred for HEP compliance not to exceed \$10,000.00 per occurrence and,
 - ii. 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 wildlife resource management agency fisheries management plan or Catawba River Basin Natural Resources Plan in North Carolina or The South Carolina Catawba River Corridor Plan in South Carolina.
- H. 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 this MOA, the

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Parties agree to promptly confer to determine what, if any modifications to this MOA should be made to address the issues raised.

- I. 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 that contemplated in this MOA, then Duke in its sole discretion may terminate this MOA.
- J. In the event that either state wildlife resources department (i.e. SCDNR, NCWRC) 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 this MOA after giving a 30-day notice to the remaining Party(ies). Except Duke may continue to administer the HEP based upon this MOA for the period included in V. E as the sole Party to the MOA and be afforded the functions listed in B. 5 and B. 6.
- K. 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.
- L. The terms of the MOA will apply to operations of the listed reservoirs of the Catawba-Wateree Hydro Project No. 2232 even if developments within the Project change ownership or if developments are included in different FERC licenses.
- M. This MOA replaces and supersedes all prior oral or written statements, representations or agreements by or between Duke and any of the other Parties relative to the Catawba-Wateree Hydro Project (FERC No. 2232) regarding woody debris and structural, shallow water fish habitat.

VI. SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the last written date below.

NCWRC

_____ (*Printed Name of Signer*)

_____ (*Signature*)

_____ (*Title*)

_____ (*Date*)

SCDNR

_____ (*Printed Name of Signer*)

_____ (*Signature*)

_____ (*Title*)

_____ (*Date*)

Duke Power

_____ (*Printed Name of Signer*)

_____ (*Signature*)

_____ (*Title*)

_____ (*Date*)