



State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF COASTAL MANAGEMENT

February 6, 2017

Martin Mayer
US Army Corps of Engineers, New Orleans District
7400 Leake Avenue
New Orleans, Louisiana 70118
Via e-mail: Martin.S.Mayer@usace.army.mil

RE: **C20160110 mod 01**, Coastal Zone Consistency modification
New Orleans District, Corps of Engineers
Direct Federal Action
Reissue 50 existing Nationwide Permits, issue two new Nationwide Permits, add one new general condition, and impose nine regional conditions to apply in the Louisiana Coastal Zone: Modification to clarify and finalize language after considering public input.
Statewide, Louisiana

Dear Mr. Mayer:

The above referenced federal consistency determination modification, published Friday, January 6, 2017, in the Federal Register Volume 82, Number 4, has been reviewed by the Louisiana Department of Natural Resources Office of Coastal Management (OCM) for consistency with the approved Louisiana Coastal Resources Program (LCRP) in accordance with Section 307(c) of the Federal Coastal Zone Management Act of 1972, as amended.

Also reviewed was your letter and consistency determination of January 10, 2017, for Colonel Michael Clancy, New Orleans District Commander, describing the New Orleans District's final regional conditions for Nationwide Permits (NWP).

After careful review of the modified NWPs, we have determined whether or not each is consistent with the LCRP (Table 1). In each case, the consistency status was determined by comparing the NWP criteria against this program's enforceable policies. Of the fifty two NWPs, 24 were found consistent with the LCRP, while 28 were found conditionally consistent.

These findings, and the conditions needed to be met in order for the 28 NWPs to be consistent with the LCRP, are unchanged from our review of the NWPs as initially proposed in June of 2016.

Pursuant to 15 CFR 930.4(a)(1), the Office of Coastal Management is required to identify the conditions which must be satisfied in order to be consistent to the maximum extent practicable, an explanation of why the conditions are necessary, and an identification of the specific enforceable policies in question.

Need for the conditions

Louisiana Revised Statutes 49:214.30 A. states that “no person shall commence a use of state or local concern without first applying for and receiving a coastal use permit.” Programmatically, unless an exemption is included in the LCRP for a particular class of activity, OCM cannot issue a blanket consistency for all activities in a given category. The merits of each individual proposed coastal use must be evaluated against a set of performance standards (the Coastal Use Guidelines and other enforceable policies of the LCRP) to establish its consistency with the State and Local Coastal Resources Program.

Since November, 1997, Louisiana has had a Coastal Wetlands Conservation Plan (CWCP) in effect for tidally influenced wetland areas in the State. This Plan is administered by OCM as an enforceable amendment of the LCRP and has a mitigation requirement for any activity having a development-related loss of coastal wetlands. The U. S. Army is a signatory partner in achieving the goals of the CWCP, and as such, must require mitigation for all NWPs in effect within the Louisiana Conservation Plan boundary that have development-related losses of tidal influenced wetlands.

Conditions

According to 33 CFR 330.4(d)(2), the Division Engineer may establish regional conditions for any Nationwide Permit which would make it consistent with a state’s coastal management program. The Division Engineer has here proposed nine regional conditions to be applied to activities affecting the Louisiana coastal zone. If all nine regional conditions are uniformly applied, the 28 Nationwide Permits would be consistent to the maximum extent practicable with the LCRP and available for use in the coastal zone of Louisiana or in the Louisiana Conservation Plan Area (Table 2). However, if the nine proposed regional conditions are applied individually, on a case-by-case basis, then regional condition 7 is not consistent with our program.

Enforceable policies

In addition to Louisiana Revised Statutes 49:214.30 A, cited above, the identified nationwide permits are, in the absence of the proposed conditions, inconsistent with provisions of the Louisiana Revised Statutes and Coastal Use Guidelines described below:

RS 49:214.41 C: Compensatory mitigation, at a level sufficient to replace or to substitute for the ecological value of the wetlands lost as a result of each permitted activity, shall be required.

RS 49:214.30.C.2.a: Concurrently with the filing of the coastal use permit application, a copy of the application shall be distributed by the applicant to the owner or owners of the land on which the proposed coastal use is to occur.

Louisiana Administrative Code, Title 43 Part I, §701.

F. Information regarding the following general factors shall be utilized by the permitting authority in evaluating whether the proposed use is in compliance with the guidelines:

1. type, nature, and location of use;
2. elevation, soil, and water conditions and flood and storm hazard characteristics of site;

3. techniques and materials used in construction, operation, and maintenance of use;
 4. existing drainage patterns and water regimes of surrounding area including flow, circulation, quality, quantity, and salinity; and impacts on them;
 5. availability of feasible alternative sites or methods of implementing the use;
 6. designation of the area for certain uses as part of a local program;
 7. economic need for use and extent of impacts of use on economy of locality;
 8. extent of resulting public and private benefits;
 9. extent of coastal water dependency of the use;
 10. existence of necessary infrastructure to support the use and public costs resulting from use;
 11. extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited;
 12. proximity to and extent of impacts on important natural features such as beaches, barrier islands, tidal passes, wildlife and aquatic habitats, and forest lands;
 13. the extent to which regional, state, and national interests are served including the national interest in resources and the siting of facilities in the coastal zone as identified in the coastal resources program;
 14. proximity to, and extent of impacts on, special areas, particular areas, or other areas of particular concern of the state program or local programs;
 15. likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts;
 16. proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources;
 17. extent of impacts on navigation, fishing, public access, and recreational opportunities;
 18. extent of compatibility with natural and cultural setting;
 19. extent of long term benefits or adverse impacts.
- G. It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant:
1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;
 2. adverse economic impacts on the locality of the use and affected governmental bodies;
 3. detrimental discharges of inorganic nutrient compounds into coastal waters;
 4. alterations in the natural concentration of oxygen in coastal waters;
 5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;
 6. adverse disruption of existing social patterns;
 7. alterations of the natural temperature regime of coastal waters;
 8. detrimental changes in existing salinity regimes;
 9. detrimental changes in littoral and sediment transport processes;
 10. adverse effects of cumulative impacts;
 11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;
 12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;
 13. discharges of pathogens or toxic substances into coastal waters;
 14. adverse alteration or destruction of archaeological, historical, or other cultural resources;

15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;
18. adverse disruptions of coastal wildlife and fishery migratory patterns;
19. land loss, erosion, and subsidence;
20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;
21. reduction in the long term biological productivity of the coastal ecosystem.

Per federal consistency regulations at 15 CFR § 930.4(a)(1), please be informed that if the conditions identified by this office are not met, then all parties shall treat this conditional concurrence letter as an objection, and the identified nationwide permits may not be used. In this case you may appeal the objection to the Secretary of Commerce within 30 days, according to the procedures found at 15 CFR §930.63(e).

Questions concerning this determination may be directed to Jeff Harris of the Consistency Section at (225) 342-7949 or 1-800-267-4019.

Sincerely yours,

/S/ Don Haydel

Acting Administrator

Interagency Affairs/Field Services Division

DH/SK/jdh

cc: Brenda Archer, COE-NOD
Colonel Michael Derosier, District Engineer, COE-VD
Colonel Lars Zetterstrom, District Engineer, COE-GD
Dave Butler, LDWF
Christine Charrier, LDNR/OCM

TABLE 1. Nationwide Permit Status in the Louisiana Coastal Zone

Nationwide Permit Number	Status with the LCRP	Nationwide Permit Number	Status with the LCRP
1	Consistent	28	Consistent
2	Consistent	29	Conditionally Consistent*
3	Conditionally Consistent*	30	Consistent
4	Consistent	31	Conditionally Consistent*
5	Consistent	32	Consistent
6	Conditionally Consistent*	33	Conditionally Consistent*
7	Conditionally Consistent*	34	Consistent
8	Consistent	35	Conditionally Consistent*
9	Consistent	36	Conditionally Consistent*
10	Consistent	37	Consistent
11	Consistent	38	Conditionally Consistent*
12	Conditionally Consistent*	39	Conditionally Consistent*
13	Conditionally Consistent*	40	Conditionally Consistent*
14	Conditionally Consistent*	41	Conditionally Consistent*
15	Consistent	42	Conditionally Consistent*
16	Consistent	43	Conditionally Consistent*
17	Consistent	44	Conditionally Consistent*
18	Conditionally Consistent*	45	Conditionally Consistent*
19	Consistent	46	Conditionally Consistent*
20	Conditionally Consistent*	47	--
21	Consistent	48	Consistent
22	Conditionally Consistent*	49	Consistent
23	Conditionally Consistent*	50	Consistent
24	Consistent	51	Conditionally Consistent*
25	Consistent	52	Conditionally Consistent*
26	--	53	Conditionally Consistent*
27	Consistent	54	Conditionally Consistent*

* Permit becomes consistent when regional conditions 1-9 are applied.

TABLE 2. Regional Conditions Status in the Louisiana Coastal Zone

Regional Condition	Status with the LCRP
1	Consistent
2	Consistent
3	Consistent
4	Consistent
5	Consistent
6	Consistent
7	Conditionally Consistent*
8	Consistent
9	Consistent

* Consistent only when applied in concert with the other eight regional conditions.