



State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF COASTAL MANAGEMENT

December 14, 2020

U.S. Army Corps of Engineers
Directorate of Civil Works
Attn.: CECW-CO-R
441 G Street NW.,
Washington, DC 20314-1000
Via e-mail: nationwidepermits2020@usace.army.mil

RE: **C20200120**, Coastal Zone Consistency
U.S. Army Corps of Engineers, Directorate of Civil Works
Direct Federal Action
Docket Number COE-2020-0002: Reissue the existing 52 Nationwide Permits and
Nationwide Permit General Conditions, issue five new Nationwide Permits, and Nationwide
Permit Louisiana Regional Conditions.
Statewide, Louisiana

Dear sir:

The above referenced federal consistency determination, published in Federal Register Volume 85, Number 179, Tuesday, September 15, 2020, 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. Other pertinent documents reviewed include:

- New Orleans District-Corps of Engineers Public Notice, dated October 1, 2020,
- Consistency determination and proposed Regional Conditions provided by Brenda Archer, New Orleans District, via e-mail of October 14, 2020.

After careful review of the proposed Nationwide Permit (NWP), 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 52 NWPs, 24 were found consistent with the LCRP, while 28 were found conditionally consistent. The five proposed new NWPs were also found to be conditionally consistent with the LCRP.

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 NWP's 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 seven regional conditions to be applied to activities affecting the coastal zone. If all seven regional conditions are uniformly applied, the 24 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 5 is not consistent with our program.

Similarly, new NWP's A, B, C, D, and E, are also conditionally consistent with the LCRP. Their use would be consistent to the maximum extent practicable with the LCRP if all seven regional conditions are uniformly applied.

Enforceable policies

In addition to Louisiana Revised Statutes 49:214.30 A., cited above, the identified nationwide permits are, in 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).

If you have any questions concerning this determination, please contact Mark Hogan of the Consistency Section at (225) 219-9530.

Sincerely yours,

/S/ Charles Reulet

Administrator

Interagency Affairs/Field Services Division

CR/SK/mfh

Enclosures: 2020_NWP_Regional_Conditions Justification Final

cc: Brenda Archer, COE-NOD
Colonel Robert A. Hilliard, COE-VD
Colonel Timothy R. Vail, 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	29	Conditionally Consistent*
2	Consistent	30	Consistent
3	Conditionally Consistent*	31	Conditionally Consistent*
4	Consistent	32	Consistent
5	Consistent	33	Conditionally Consistent*
6	Conditionally Consistent*	34	Consistent
7	Conditionally Consistent*	35	Conditionally Consistent*
8	Consistent	36	Conditionally Consistent*
9	Consistent	37	Consistent
10	Consistent	38	Conditionally Consistent*
11	Consistent	39	Conditionally Consistent*
12	Conditionally Consistent*	40	Conditionally Consistent*
13	Conditionally Consistent*	41	Conditionally Consistent*
14	Conditionally Consistent*	42	Conditionally Consistent*
15	Consistent	43	Conditionally Consistent*
16	Consistent	44	Conditionally Consistent*
17	Consistent	45	Conditionally Consistent*
18	Conditionally Consistent*	46	Conditionally Consistent*
19	Consistent	47	--
20	Conditionally Consistent*	48	Consistent
21	Consistent	49	Consistent
22	Conditionally Consistent*	50	Consistent
23	Conditionally Consistent*	51	Conditionally Consistent*
24	Consistent	52	Conditionally Consistent*
25	Consistent	53	Conditionally Consistent*
26	--	54	Conditionally Consistent*
27	Consistent		
28	Consistent		

A	Conditionally Consistent*	D	Conditionally Consistent*
B	Conditionally Consistent*	E	Conditionally Consistent*
C	Conditionally Consistent*		

* Permit becomes consistent when Regional Conditions 1-7 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	Conditionally Consistent*
6	Consistent
7	Consistent

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

**STATE OF LOUISIANA
NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS**

Proposed for 2020

PART I - REGIONAL CONDITIONS FOR ALL NWPS:

Regional Condition 1. No regulated activity may cause the permanent loss or the conversion of greater than 1/2 acre of cypress swamp and/or cypress-tupelo swamp
Justification: The Louisiana State and Local Coastal Resources Management Act requires no net loss of wetlands: <http://www.doa.la.gov/Pages/osr/lac/LAC-43.aspx>

Regional Condition 2. No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of coastal prairie, pine savanna, and/or pitcher plant bogs.

Justification: The Louisiana State and Local Coastal Resources Management Act requires no net loss of wetlands: <http://www.doa.la.gov/Pages/osr/lac/LAC-43.aspx>

Regional Condition 3. No regulated activity is authorized under any NWP permit which has been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary.

Justification: The Coastal Zone Management Act of 1972 requires that actions that would require a federal license or permit, within a national wildlife refuge, which have reasonably foreseeable effects on any coastal use (land or water) or natural resource of the coastal zone be reviewed and found consistent with the enforceable policies of a state's federally approved coastal management program.

Regional Condition 4. Dredged and/or fill material placed within wetlands and other waters must be free of contaminants, to the best of the applicant's knowledge.

Justification: Required by the State and Local Coastal Resources Management Act of 1978. State Law. <https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter B §711 (N.)

Regional Condition 5. For work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana;

a. The New Orleans District's Programmatic General Permit (PGP) generally supersedes the Nationwide Permit authorization for regulated activities located within the Louisiana Coastal Zone as incorporated within the New Orleans Corps District boundaries. Projects typically will not qualify for a Nationwide Permit if they qualify for the Programmatic General Permit.

b. A joint permit application for work must first be submitted to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM). OCM will then forward the request to the Corps of Engineers-New Orleans

District.

c. NWP requests that have not received a Coastal Use Permit or other consistency determination from the OCM would be processed by the Corps. However any granted authorization may be conditioned to require the applicant to obtain appropriate authorization from OCM before the NWP is valid.

Justification: Required by the State and Local Coastal Resources Management Act of 1978. State Law. <http://legis.la.gov/Legis/Law.aspx?d=103636> 214:30.

Regional Condition 6. A pre-construction notification, as defined under nationwide general condition 32, will be provided for all regulated activities, excluding Nationwide 20, that

- a. Adversely affects greater than 1/10 acre of wetlands, and/or;
- b. Adversely impacts a Louisiana designated Natural and Scenic River or a state or federal wetland/wildlife management area and/or refuge

Justification: The Louisiana State and Local Coastal Resources Management Act requires no net loss of wetlands: <http://www.doa.la.gov/Pages/osr/lac/LAC-43.aspx>

Regional Condition 7, Supplement to General Condition 2 – Aquatic Life Movement. To support compliance with General Condition 2 of the NWPs, culverts must be sufficiently sized to maintain expected high water flows and be installed at a sufficient depth to maintain low flows to sustain the movement of aquatic species.

Justification: The Louisiana State and Local Coastal Resources Management Act requires no net loss of wetlands: <http://www.doa.la.gov/Pages/osr/lac/LAC-43.aspx>

PART II - REGIONAL CONDITIONS FOR SPECIFIC NWPS

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

For the following NWP

- NWP 3. Maintenance:
- NWP 6. Survey Activities:
- NWP 7. Outfall Structures and Associated Intake Structures:
- NWP 12. Oil or Natural Gas Pipeline Activities
- NWP 13. Bank Stabilization
- NWP 14. Linear Transportation Projects:
- NWP 18. Minor Discharges:

- NWP 20. Response Operations for Oil and Hazardous Substances**
- NWP 22. Removal of Vessels:**
- NWP 23. Approved Categorical Exclusions:**
- NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement**

Activities:

- NWP 29. Residential Developments:**
- NWP 31. Maintenance of Existing Flood Control Facilities:**
- NWP 33. Temporary Construction, Access and Dewatering:**
- NWP 35. Maintenance Dredging of Existing Basins:**
- NWP 36. Boat Ramps:**
- NWP 38. Cleanup of Hazardous and Toxic Waste:**
- NWP 39. Commercial and Institutional Developments:**
- NWP 40. Agricultural Activities:**
- NWP 41. Reshaping Existing Drainage Ditches**
- NWP 42. Recreational Facilities**
- NWP 43. Stormwater Management Facilities**
- NWP 44. Mining Activities**
- NWP 45. Repair of Uplands Damaged by Discrete Events:**
- NWP 46. Discharges in Ditches:**
- NWP 51. Land-Based Renewable Energy Generation Facilities:**
- NWP 52. Water-Based Renewable Energy Generation Pilot Projects:**
- NWP 53. Removal of Low-Head Dams**
- NWP 54. Living Shorelines**

Justification: Coastal Use Permit required:

<https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter C §723 (2.)

- NWP 39. Commercial and Institutional Developments:**
- NWP 41. Reshaping Existing Drainage Ditches:**
- NWP 42. Recreational Facilities:**
- NWP 43. Stormwater Management Facilities:**
- NWP 44. Mining Activities**
- NWP-E Water Reclamation and Reuse Facilities**

Justification: Coastal Use Permit required:

<https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter C §723 (2.). Required by the State and Local Coastal Resources Management Act of 1978. State Law. <https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter B §709 (C.). HMIA and state law, regarding suspended solids and water quality.

HMIA:

http://www.dnr.louisiana.gov/assets/OCM/permits/NAJ/HMIA_guide_r1_02_27_15.pdf

- NWP 12. Utility Line Activities**
- NWP-C Electric utility line and telecomm**
- NWP-D Utility lines that convey other substances, such as potable water, sewage, wastewater, stormwater, brine, or industrial products that are not petrochemicals**

Justification: Required by the State and Local Coastal Resources Management Act of

1978. State Law. <https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter B §707 (A.) & Coastal Use Permit required: <https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter C §723 (2.)

NWP 13. Bank Stabilization

Justification: Required by the State and Local Coastal Resources Management Act of 1978. State Law. <https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter B §709 (C.) & Coastal Use Permit required: <https://www.doa.la.gov/osr/LAC/43v01/43v01-06.doc> Subchapter C §723 (2.)