



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

March 21, 2024

South Mississippi Branch
Regulatory Division

SUBJECT: Mobile District requests Coastal Zone Consistency Concurrence for the proposed Section 404 Letter of Permission, Hancock, Harrison, and Jackson Counties, Mississippi

Mississippi Department of Marine Resources
Attention: Ms. Willa Brantley
1141 Bayview Avenue
Biloxi, Mississippi 39530

Dear Ms. Brantley:

On February 29, 2024, the USACE, Mobile District issued a 30-day public notice regarding its proposal to issue Section 404 Letter of Permission (404 LOP) procedures, Department of the Army Project Number SAM-2023-00297-KMN.

This letter is the Corps' determination of Coastal Zone Management Act (CZMA) consistency, pursuant to Section 307(c)(1) of the CZMA for MSGP activities within or affecting the coastal zone of the State of Mississippi. By the referenced public notice and confirmation by this letter, the Mobile District requests CZMA consistency concurrence for the proposed issuance of the 404 LOP procedures. A copy of the 404 LOP is attached.

At this time, we are asking that you begin your review and approval process. In accordance with 15 CFR 930.36(b), please provide your concurrence or objection to the Mobile District's consistency determination within 90 days. If you do not reach a final position on CZMA consistency before the end of the 90-day period, we will presume consistency concurrence.

Thank you for your attention regarding this matter. If you have any questions regarding this request, please feel free to contact Ms. Kaaren Neumann of my staff at Kaaren.M.Neumann@usace.army.mil or (228) 386-8293. We look forward to working with your office throughout the CZMA review process for the proposed 404 LOP procedures.

Sincerely,

Dylan C. Hendrix, Chief
South Mississippi Branch
Regulatory Division

Attachments



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

CESAM-RD
Regulatory Division

February 29, 2024

SPECIAL PUBLIC NOTICE

**SECTION 404 LETTER OF PERMISSION (LOP) PERMIT PROCEDURE FOR
DREDGING ACTIVITIES WITH PROPOSED DISPOSAL INTO MDMR BENEFICIAL USE
SITES IN THE STATE OF MISSISSIPPI AND WITHIN THE TERRITORIAL SEA OFF THE
COAST OF MISSISSIPPI WITHIN THE REGULATORY BOUNDARIES OF THE MOBILE
DISTRICT AND WITHIN THE REGULATORY BOUNDARIES OF THE VICKSBURG
DISTRICT IN HANCOCK, HARRISON, AND JACKSON COUNTIES**
U.S. ARMY CORPS OF ENGINEERS

TO WHOM IT MAY CONCERN:

The Mobile District and Vicksburg District (Districts) are implementing a new Letter of Permission (LOP) procedure to more efficiently authorize dredging activities with minor impacts on the aquatic environment which would involve discharges of dredged material into permitted Mississippi Department of Marine Resources (MDMR) Beneficial Use Sites in the State of Mississippi and within the Territorial Sea off the coast of Mississippi, within the Regulatory boundaries of the Mobile District and Vicksburg District in Hancock, Harrison, and Jackson Counties, subject to Section 10 of the Rivers and Harbors Act of 1899 (33 USC403), and/or Section 404 of the Clean Water Act (33 USC 1344).

ACTION ID: SAM-2023-00297-KMN

AUTHORITY: 33 CFR 325.2(e)(i)

LOCATION: In Section 10 waters of Hancock, Harrison, and Jackson Counties, Mississippi, within Mobile District and Vicksburg District's Regulatory Boundaries

PURPOSE: The proposed 404 LOP procedure is an optional abbreviated permit process available to all applicants for Department of the Army permits for dredging activities meeting the criteria and conditions described in this notice. Any permits issued under this 404 LOP process would be effective for a 10-year period from date of issuance. If the proposed activity does not meet 404 LOP criteria as outlined, or the applicant chooses not to use this process, the activity may be authorized under a different permit procedure (Nationwide Permit, General Permit, or Standard Permit).

BACKGROUND: In July of 2010 the State of Mississippi passed legislation, "Mississippi Code, Title 49 – CONSERVATION AND ECOLOGY, Chapter 27 – COASTAL WETLANDS PROTECTION ACT, §49-27-61 – Charges for materials removed under permit; alternative for dredge material disposal", which mandates that dredging projects obtaining material over 2,500 cy (cubic yards) be subject for use as Beneficial Use Material as deemed acceptable by Mississippi Department of Marine Resources (MDMR).

In accordance with Title 33 of the Code of Federal Regulations (CFR) Part 325, District Engineers are authorized to use alternative procedures, including LOPs, to authorize activities under the Corps Regulatory Program. LOPs are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. In accordance with 33 CFR 325.2(e)(1), LOPs may be used:

- (i) In those cases, subject to Section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the District Engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition.
- (ii) In those cases, subject to Section 404 of the Clean Water Act after:
 - (A) The District Engineer, through consultation with Federal and state fish and wildlife agencies, the Regional Administrator, Environmental Protection Agency, the state water quality certifying agency and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;
 - (B) The District Engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and
 - (C) A 401 Water Quality Certification has been issued or waived and, if appropriate, Coastal Zone Management (CZM) consistency concurrence obtained or presumed either on a generic or individual basis.

PROPOSED CATEGORIES OF ACTIVITIES: The proposed categories of activities to be authorized by the proposed 404 LOP include dredging activities which would have an overall minimal impact, individually and cumulatively, on aquatic resources and the human environment. Activities to be authorized would involve dredging, transport, and disposal of dredged material into permitted MDMR Beneficial Use Sites.

A 404 LOP would be issued only for those activities which meet all the criteria identified in this notice, including the general conditions and which have only minor impacts on the aquatic environment. Applications for the 404 LOP must clearly demonstrate impacts to aquatic resources would be avoided and minimized to the maximum extent practicable. The Districts reserve the use of discretionary authority to determine that an activity may be authorized under this 404 LOP: that an activity may be authorized under this 404 LOP with the addition of special conditions: or that an activity may not be authorized by this 404 LOP and would instead require authorization under another permit type.

To qualify for the proposed 404 LOP under this procedure, activities must meet the following criteria:

- A. The dredged material would meet or exceed Mississippi Department of Marine Resources Dredged Sediment Evaluation, January 2021 or newer versions if revised.
- B. The dredged material would be placed into a permitted Mississippi Department of Marine Resources Beneficial Use Site and follow all special conditions associated with the permit for the Beneficial Use Site(s).

LOP PROCEDURE:

A. Application Submittal

To be considered for authorization by this 404 LOP, the application must include all information required for a standard permit application, pursuant to 33 CFR 325.1. The application packet must be submitted to the Mississippi Department of Marine Resources, Wetland Permitting at <https://dmr.ms.gov/joint-application-form/>. All submitted documents must be suitable for electronic transmittal.

B. Processing

1. The Mississippi Department of Marine Resources, Bureau of Wetland Permitting would forward the applicant's submittal to the appropriate district for review.
2. The District would review the applicant's submittal for completeness within approximately fifteen (15) calendar days of receipt. If the application is incomplete, the District would notify the applicant and request the additional information necessary to complete the application for continued processing.
3. If the District determines the application is complete but the activity cannot be authorized by this 404 LOP, the District would notify the applicant within 15 calendar days of that determination and proceed to an alternate permitting process (Nationwide Permit, General Permit, or Standard Permit).
4. If the application is determined to be complete and appears to meet 404 LOP criteria, the District would notify the applicant that the proposed activity is being evaluated for 404 LOP authorization and prepare a 404 LOP Notice to include the complete application and all appropriate supporting documents for review to the appropriate agencies (example: U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Coast Guard, National Marine Fisheries Service; Protected Resource Division and Habitat Conservation Division, Mississippi Environmental Protection Agency, Mississippi Department of Marine Resources: Wetland Permitting and Beneficial Use Coordinator, Mississippi Department of Archives and History) and adjacent property owners for a 15 day review and comment period.

5. The District would review the comments received and, if otherwise complete, make a determination within 30 calendar days after the close of the comment period as to whether 404 LOP authorization is warranted, and whether special case-specific conditions are needed. If the activity meets the criteria for the 404 LOP authorization and would have an overall minimal effect on aquatic resources and the human environment, a 404 LOP would be issued for up to a 10-year period.
6. If at any time during the process the District determines the activity may not be authorized by a 404 LOP, the District would notify the applicant, terminate the 404 LOP process, and proceed to an alternate permitting process (Nationwide Permit, General Permit, or Standard Permit).
7. A 404 LOP would not be issued until and unless all necessary certifications, consultations and/or authorizations have been completed and/or issued.

C. General Conditions

General Conditions applicable to all 404 LOPs are attached. These General Conditions would be attached to any issued 404 LOP.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which a decision by the USACE can be based. For accuracy and completeness of the record, all data in support of or in opposition to the development of the 404 LOP should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision whether to initiate the 404 LOP program would be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision would reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposed activities must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the 404 LOP would be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed 404 LOP. Any comments received would be considered by the USACE to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National

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Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed general permits.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the proposed general permits. Requests for public hearings shall state with particularity, the reasons for holding a public hearing.

Evaluation of the probable impacts involving deposits of dredged or fill material into waters of the United States would include the application of guidelines established by the Administrator of the U.S. Environmental Protection Agency.

The USACE would apply for certification from the State (1) in accordance with Section 401(a)(1) of the Clean Water Act, and upon completion of the required advertising, a determination relative to certification would be made by the Mississippi Department of Environmental Quality; and (2) to ensure that all proposed activities comply with and would be conducted in a manner that is consistent with the State Coastal Zone Management Program. A determination relative to consistency would be made by the Mississippi Department of Marine Resources.

In accordance with Section 106 of the National Historic Preservation Act, and Appendix C of 33 CFR 325, we are seeking comment from the State Historic Preservation Officer, Federally-recognized American Indian tribes, local historical societies, museums, universities, the National Park Service, and concerned citizens regarding the proposed 404 LOP procedures.

By copy of this Public Notice, the USACE is requesting comments from the U.S. Fish and Wildlife Service, in accordance with the provisions of the Endangered Species Act, regarding the proposed 404 LOP procedures.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Activities authorized by the proposed 404 LOP have the potential to affect essential fish habitat. Our initial determination is that the proposed 404 LOP procedures, with conditions, would not have a substantial adverse impact on EFH or Federally managed fisheries. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

Permit specific comments should refer to the applicable Public Notice Number and should be directed to USACE, Regulatory Division, Attention: Ms. Kaaren Neumann, Post Office Box 2288, Mobile, Alabama 36628-0001 or by email to Kaaren.M.Neumann@usace.army.mil.

All public notice comments should be received no later than April 01, 2024

Please communicate this information with interested parties. If you have any questions concerning this notice or for additional information, you may contact Ms. Neumann at (228)

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386-8293 or by e-mail Kaaren.M.Neumann@usace.army.mil. For additional information about our Regulatory Program, please visit our web site at www.sam.usace.army.mil/Missions/Regulatory.aspx.

**Mobile District
U.S. Army Corps of Engineers**

PERMIT GENERAL CONDITIONS/INFORMATION

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends **(10 yrs)**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.

Permit General Conditions / Information

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- d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.