Proposed Regional Conditions (RCs) for Mississippi

2012 NATIONWIDE PERMITS (NWPs)

A. Regional Conditions for All Nationwide Permits

1. For all Nationwide Permit (NWP) authorizations in the Coastal Zone of Mississippi, which includes Hancock, Harrison, and Jackson Counties:

On March 26, 2007, the Mississippi Department of Marine Resources (DMR) found that all Nationwide Permits are consistent to the maximum extent practicable with the Mississippi Coastal Program (copy attached) provided that the following Regional Conditions are followed in the Coastal Zone of Mississippi.

a. For all Nationwide Permit (NWP) authorizations, including those for activities that do not require Pre-Construction Notification (PCN) to the District Engineer (DE), activities in the following waters of the U.S. cannot be initiated until the applicant has received a Coastal Use Permit (CUP) or waiver from the Mississippi Department of Marine Resources (MS-DMR). Those waters of the U.S. requiring a CUP or waiver from MS-DMR prior to project initiation include:

1. All tidal waters in Hancock, Harrison, and Jackson counties, Mississippi, and

2. All waters of the U.S. having a hydrological connection to tidal waters in "a" above and that are located no more than 200 feet landward of the mean high tide mark.

b. For all regulated activities in (i) tidal waters and/or (ii) waters of the U.S. adjacent to tidal waters located in Hancock, Harrison, or Jackson counties, all Pre-Construction Notifications (PCNs) required by a specific NWP shall be completed using the Joint Application Form and shall be submitted to the Mississippi Department of Marine Resources (DMR) at the following address:

Mississippi Department of Marine Resources
Bureau of Wetlands Permitting
1141 Bayview Drive Suite 101
Biloxi, Mississippi 39530

Joint Application Forms may be printed or downloaded from the Mississippi Department of Marine Resources (DMR) website at: http://www.dmr.state.ms.us/Coastal-Ecology/permitting/Joint-ApplicationNotification-Form2.pdf, from the Vicksburg District Regulatory Program website at: http://www.mvk.usace.army.mil/offices/od/odf/main.htm, or from the Mobile District Regulatory Program website at: http://www.sam.usace.army.mil/RD/reg/application.htm.

NOTE: Where the Corps District and DMR have developed Programmatic General Permits for the type of activity proposed, DMR may process and issue the appropriate DA permit(s), along with any required Coastal Use Permit requirements. For activities not covered by Programmatic General Permits, DMR shall forward all application materials to the appropriate Corps District office for processing of any required DA permits. If the application is forwarded to the Corps for processing, DMR shall notify the Corps District if a Coastal Use Permit will be required for the activity.

1. **For all NWP authorizations on Black Creek in Perry County between Moody's Landing, downstream to the Fairley Bridge Road crossing -** a federally designated Wild and Scenic River reach in Mississippi - the applicant must obtain a written statement from the U.S. Forest Service (USFS) that the activity will not adversely affect the Wild and Scenic River designation prior to initiating any construction activities (see General Condition 17). If the proposed activity otherwise requires pre-construction notification (PCN) to the Corps, the PCN must include such written statement of approval from the USFS. *(U.S. Forest Service, Post Office Box 248, 654 West Frontage Road, Wiggins, Mississippi 39577)*

2. **For all regulated activities that might affect a Federally-listed threatened or endangered species or critical habitat -** Pre-Construction Notification (PCN) shall be required. Waterways in Mississippi with reported occurrences of Federally-listed threatened or endangered species or critical habitat, as of July 1, 2007, are listed below. Applicants are advised that the U.S. Fish and Wildlife Service (USFWS) may change the Endangered Species Act status of species in Mississippi waterways, and those changes would affect the list of waterways and associated "Species of Concern". Further, this Regional Condition does not lessen the restrictions or requirements provided by General Condition 19. As stated in General Conditions 19 and 30 (76 FR 9174 - 9207), the PCN from non-Federal applicants must include the name(s) of the

threatened or endangered species that might be affected by the proposed work or that utilize designated critical habitat that might be affected by the proposed work. PCNs from Federal applicants must include documentation of compliance with the Endangered Species Act. For NWP 6, 12, and 14 activities that trigger this PCN requirement, the PCN required by this condition may be limited to those portions of the activity that might affect a Federally-listed threatened or endangered species or critical habitat.

NOTE: The following definitions apply to the "listing index" following scientific names of the listed species of concern: C = Candidate Species; the U.S. Fish and Wildlife Service has enough scientific information to warrant proposing these species as endangered or threatened under the Endangered Species Act. CH = Critical Habitat; the U.S. Fish and Wildlife Service has designated official critical habitat for this species. LE = Listed Endangered; the U.S. Fish and Wildlife Service has listed these species as endangered under the Endangered Species Act. LT = Listed Threatened; the U.S. Fish and Wildlife Service has listed these species as threatened under the Endangered Species Act.

Bayou Pierre River and following tributaries: White Oak Creek, Foster Creek, and Turkey Creek - Located in Claiborne, Copiah, and Hinds Counties - Species of Concern: bayou darter (*Etheostoma rubrum* -LT)

Bear Creek - Located in Tishomingo County - Species of Concern: the cumberlandian combshell mussel (*Epioblasma brevidens* -LE) and the slabside pearlymussel (*Lexingonia dolabelloides* -C)

Bogue Chitto River - Located in Pike County Species of Concern: gulf sturgeon (*Acipenser oxyrhynchus desotoi*-LT, CH) from State Highway 570 south

Mississippi River and adjacent land west of Main line levee - Located in the following Counties: Adams, Coahoma, Jefferson, Warren, Bolivar, DeSoto, Sharkey, Washington, Claiborne, Issaquena, Tunica, Wilkinson - Species of Concern: interior least tern (*Sterna antillarum* -LE), pallid sturgeon (*Scaphirhynchus albus* -LE), and/or the fat pocketbook (*Potamilus capax* -LE)

MS Coastal Waterways and Streams, including: Back Bay of Biloxi, Biloxi River, Escatawpa River, Old Fort Bayou, Pascagoula River, and Tchoutacabouffa River - Located in Harrison and Jackson Counties - Species of Concern: Alabama

red-bellied turtle (*Pseudemys alabamensis* -LE) and/or the yellow-blotched map turtle (*Graptemys flavimaculata* -LT)

Mississippi Sound and other back bays – Located in Hancock, Harrison, and Jackson Counties - Species of Concern: Brown pelican (*Pelecanus occidentalis* -LE), piping plover (*Charadrius melodus* -LE, CH), West Indian manatee (*Trichechus manatus* -LE), green turtle (*Chelonia mydas* -LT), kemp's ridley turtle (*Lepidochelys kempii* -LE), loggerhead turtle (*Caretta caretta* - LT), and/or the gulf sturgeon (*Acipenser oxyrhynchus desotoi* - LT, CH)

Pascagoula River and the following tributaries: Bouie, Chickasawhay, Okatoma, and Leaf Rivers – Located in the following Counties: Clarke, Greene, Perry, Forrest, Jackson, Stone, George, Jones & Wayne - Species of Concern: yellow-blotched map turtle (*Graptemys flavimaculata* LT), gulf sturgeon (*Acipenser oxyrhynchus desotoi* LT, CH), pearl darter (*Percina aurora* -C), and/or Alabama red-bellied turtle (*Pseudemys alabamensis* -LE)

Pearl River – Located in the following Counties: Copiah, Leake, Neshoba, Scott, Hinds, Madison, Pearl River, Simpson, Lawrence, Marion & Rankin - Species of Concern: ringed map turtle (*Graptemys oculifera* - LT), gulf sturgeon (*Acipenser oxyrhynchus desotoi* -LE, CH), and/or the inflated heelsplitter (*Potamilus inflatus* -LT)

Tombigbee River and the following tributaries: Buttahatchie, Luxapalilla, and Bull Mountain – Located in Itawamba, Lowndes and Monroe Counties - Species of Concern: heavy pigtoe mussel (*Pleurobema taitianum* -LE), southern combshell mussel (*Epioblasma penita* -LE), southern clubshell mussel (*Pleurobema decisum* -LE), the ovate clubshell mussel (*Pleurobema perovatum* - LT), the black clubshell mussel (*Pleurobema curtum* -LE), the threatened Alabama moccasinshell (*Medionidus acutissimus* -LT), the threatened orange-nacre mucket (*Lampsilis perovalis* -LT)

NOTE: For all proposed activities requiring a PCN to the Corps, the Regulatory Project Manager shall coordinate with USFWS-Jackson, or its designee, and/or NMFS (if tidal waters or waters of the US that may influence tidal waters), to insure compliance with General Condition 19. The Corps' responsibility before initiating this coordination is to make a "No effect" or "May effect" determination for the activity. If sufficient information is not available from the applicant or from "in-house" information, the Corps may determine and inform the applicant that the PCN is incomplete. If a "May Affect"

determination is made, the Corps shall enter into informal consultation with USFWS/NMFS, and the Corps will notify the applicant that the evaluation of the application has been delayed pending the outcome of the T&E species consultation.

B. Corps Regional Conditions for Specific NWPs

1. Nationwide Permit 12. Utility Lines.

Pre-Construction Notification (PCN) to the appropriate District Engineer shall be required for all Section 404 regulated activities that include new construction by a commercial or municipal entity (i.e. excludes maintenance of existing structures or fill), where the activity extends beyond the boundaries of single property ownership, if impacts to the following species or their critical habitat may occur within the "Project Area" of the proposed NWP 12 activity. These PCNs will be submitted to other agencies for comment as appropriate (e.g. USFWS, SHPO, DEQ, etc.).

Gopher Tortoise (*Gopherus polyphemus* -LT), Black Pine Snake (*Pituophis melanoleucus* ssp. *Lodingi* -C), and/or Eastern Indigo Snake (*Drymarchon corais couperi* - LT), upland habitats - Located in Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Lamar, Marion, Pearl River, Perry, Stone, Walthall, and Wayne Counties

Louisiana Black Bear (*Ursus americanus luteolus* -LT) - No existing den or candidate den trees may be felled within areas known to be occupied by the Louisiana black bear. (Candidate den trees are defined as bald cypress and/or tupelo gum with visible cavities, having a minimum diameter-at-breast-height of 36 inches, and associated with rivers, lakes, streams, bayous, sloughs or other waterbodies - Located in counties south of Mississippi Highway 82.)

Louisiana Quillwort (*Isoetes louisianaensis* - LE) - intermittent and small perennial streams - Located in Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Pearl River, Perry, Stone, and Wayne Counties

Mississippi Gopher Frog (*Rana sevosa* - LE) - Isolated ephemeral (temporary) ponds/wetlands located in upland long-leaf pine habitat - Located in Jackson and Harrison Counties

Mississippi Sandhill Crane (*Grus canadensis pulla* - LE) - pine savannas, brackish marsh, cultivated fields, and pasture lands

within 5 miles of the Mississippi Sandhill Crane National Wildlife Refuge -Located in Jackson County

Pondberry (*Lindera melissifolia* - LE) -bottomland hardwood wetlands - Located in Bolivar, Sharkey, Sunflower, and Tallahatchie Counties

Price's potato bean (*Apios priceana* - LT) - wooded areas that grade into creek and river bottoms - Located in Chickasaw, Clay, Kemper, Lee, and Oktibbeha Counties

Red-cockaded woodpecker (*Picoides borealis* - LE), excavates nesting cavities in mature pine trees (60+ years old) - Located in Amite, Copiah, Forrest, Franklin, George, Greene, Harrison, Jackson, Jasper, Jefferson, Jones, Lincoln, Noxubee, Oktibbeha, Perry, Scott, Smith, Stone, Wayne, Wilkinson, Winston, and Yalobusha Counties (primarily found on or near US National Forests)

Legend: C = Candidate Species; the U.S. Fish and Wildlife Service has enough scientific information to warrant proposing these species as endangered or threatened under the Endangered Species Act. CH = Critical Habitat; the U.S. Fish and Wildlife Service has designated official critical habitat for this species. LE = Listed Endangered, the U.S. Fish and Wildlife Service has listed these species as endangered under the Endangered Species Act. LT = Listed Threatened; the U.S. Fish and Wildlife Service has listed these species as threatened under the Endangered Species Act.

NOTE: For all proposed activities requiring a PCN to the Corps, the Regulatory Project Manager shall coordinate with USFWS-Jackson, or its designee, and/or NMFS (if tidal waters or waters of the US that may influence tidal waters) to insure compliance with General Condition 19. The Corps' responsibility before initiating this coordination is to make a "No effect" or "May effect" determination for the activity. If sufficient information is not available from the applicant or from "in-house" information, the Corps may determine and inform the applicant that the PCN is incomplete. If a "May Affect" determination is made, the Corps shall enter into informal consultation with USFWS/NMFS, and the Corps will notify the applicant that the evaluation of the application has been delayed pending the outcome of the T&E species consultation.

2. Nationwide Permit 14: Linear Transportation Crossings.

Pre-Construction Notification (PCN) to the appropriate District Engineer shall be required for all Section 404 regulated activities that include new construction by a commercial or municipal entity (i.e. excludes maintenance of existing structures or fill), where the activity extends beyond the boundaries of single property ownership, if impacts to the following species or their critical habitat may occur within the "Project Area" of the proposed NWP 14 activity. These PCNs will be submitted to other agencies for comment as appropriate (e.g. USFWS, SHPO, DEQ, etc.).

Gopher Tortoise (*Gopherus polyphemus* - LT), Black Pine Snake (*Pituophis melanoleucus* ssp. *Lodingi* - C), and/or Eastern Indigo Snake (*Drymarchon corais couperi* - LT), upland habitats - Located in Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Lamar, Marion, Pearl River, Perry, Stone, Walthall, and Wayne Counties

Louisiana Black Bear (*Ursus americanus luteolus* - LT) - No existing den or candidate den trees may be felled within areas known to be occupied by the Louisiana black bear. (Candidate den trees are defined as bald cypress and/or tupelo gum with visible cavities, having a minimum diameter-at-breast-height of 36 inches, and associated with rivers, lakes, streams, bayous, sloughs or other waterbodies - Located in counties south of Mississippi Highway 82.)

Louisiana Quillwort (*Isoetes louisianaensis* - LE) - intermittent and small perennial streams - Located in Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Pearl River, Perry, Stone, and Wayne Counties

Mississippi Gopher Frog (*Rana sevosa* - LE) - Isolated ephemeral (temporary) ponds/wetlands located in upland long-leaf pine habitat - Located in Jackson and Harrison Counties

Mississippi Sandhill Crane (*Grus canadensis pulla* - LE) -pine savannas, brackish marsh, cultivated fields, and pasture lands within 5 miles of the Mississippi Sandhill Crane National Wildlife Refuge - Located in Jackson County

Pondberry (*Lindera melissifolia* - LE) - bottomland hardwood wetlands - Located in Bolivar, Sharkey, Sunflower, and Tallahatchie Counties

Price's potato bean (*Apios priceana* - LT) - wooded areas that grade into creek and river bottoms – Located in Chickasaw, Clay, Kemper, Lee, and Oktibbeha Counties

Red-cockaded woodpecker (*Picoides borealis* - LE), excavates nesting cavities in mature pine trees (60+ years old) – Located in Amite, Copiah, Forrest, Franklin, George, Greene, Harrison, Jackson, Jasper, Jefferson, Jones, Lincoln, Noxubee, Oktibbeha, Perry, Scott, Smith, Stone, Wayne, Wilkinson, Winston, and Yalobusha Counties (primarily found on or near US National Forests)

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3. Nationwide Permit 41: Reshaping Existing Drainage Ditches.

a. Any clearing of vegetation or side casting of excavated material shall be restricted to one side of the drainage ditch, where practicable, with gaps between side-cast material every 50 feet.

b. Banks shall be seeded and stabilized upon completion of excavation activities.

4. Nationwide Permit 44: Mining Activities.

Pre-Construction Notification to the appropriate Corps District is required for all NWP 44 activities, **due to the denial of Water Quality Certification** for NWP 44 by the Mississippi Department of Environmental Quality.

C. ADDITIONAL APPLICATION REVIEW REQUIREMENTS FOR PCNs FOR SPECIFIC NWPS

1. Complete PCNs for authorizations under NWPs 12, 14, 21, 29, 39, 40, 42, and 43 that include a discharge into a Monitored waterway of the Mississippi 303(d) waters listed for sediment or biological impairment or waterways with a completed TMDL for sediment or biological impairment shall include:

a. a statement of why the discharge cannot be avoided;

b. a description of best management practices that will be utilized on the project site to minimize adverse impacts within the project area at the site;

c. if the Corps determines that compensation is required to insure that adverse impacts resulting from the activity will be no more than minimal, the applicant shall also submit a compensatory mitigation plan for approval by the Corps.

1. For PCNs described in C.1, above, the DE shall give Mississippi Department of Environmental Quality (MS-DEQ) staff an opportunity to comment on all of the above mitigation measures.