

STATE OF MISSISSIPPI
NATIONWIDE PERMIT REGIONAL CONDITIONS

A. REGIONAL CONDITIONS FOR ALL NATIONWIDE PERMITS

1. Coastal Zone Management Act (CZMA) concurrence was not granted by the Mississippi Department of Marine Resources (MDMR) for all NWPs located within the three categories of waters of the United States (U.S.), including wetlands, listed below. Therefore, CZMA concurrences are considered denied and applicants must contact MDMR for a project-specific CZMA review and concurrence determination:

- i. All tidal waters in Hancock, Harrison, and Jackson Counties;
- ii. All waters of the U.S. having a surface hydrological connection to tidal waters in Hancock, Harrison, and Jackson Counties, and that are located within 200 feet landward of the observed mean high tide mark; and
- iii. All marsh habitats (i.e. all tidal emergent wetlands dominated by salt or estuarine marsh plant species; and all non-tidal emergent wetlands dominated by freshwater marsh plant species, abutting and/or adjacent to tidal emergent wetlands) in Hancock, Harrison, and Jackson Counties (except pine savannah and pitcher plant bogs) having a surface hydrological connection to tidal waters in Hancock, Harrison, and Jackson Counties, whether saltwater, brackish, or freshwater marshes and including high marsh habitat, even if located more than 200 feet landward of the observed mean high tide mark.

For ALL Nationwide Permit (NWP) authorizations in the above listed waters of the U.S., including wetlands, the applicant must contact MDMR for a case-specific CZMA review and obtain concurrence from MDMR that proposed activities under any NWP are consistent to the maximum extent practicable with the enforceable policies of the State of Mississippi's coastal management program. Applicants are advised that additional measures may be required to ensure activities are consistent with the State of Mississippi's coastal management program.

Process: (1) The applicant shall submit their proposed project information directly to MDMR using the Joint Application & Notification form and include a CZMA consistency determination (CZCD); (2) the applicant is required to receive the CZCD concurrence prior to project initiation to achieve compliance with NWP conditions; and (3) upon receipt of the CZCD concurrence from MDMR, the applicant must provide the CZCD concurrence to the applicable Corps District.

The Joint Application and Notification form may be downloaded or printed from the MDMR website at: <http://www.dmr.ms.gov/index.php/coastal-resources-management/wetland-permitting>

If a pre-construction notification (PCN) to the Corps is required, the attachment to these Regional Conditions highlights the minimum additional information needed.

The completed submittal shall be sent directly to MDMR at the following address:

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

2. A PCN to the appropriate Corps District is required for all regulated activities located within or adjacent to Black Creek within the reach beginning approximately ¼-mile upstream of Moody's Landing and ending approximately ¼-mile downstream of the Fairly Road Bridge crossing. The Corps will coordinate the PCN with the National Forest Service per requirements of Section 7 of the Wild and Scenic Rivers Act and General Condition 16 of the NWP's.

3. NWP authorizations for regulated activities in the Grand Bay National Estuarine Research Reserve, a designated critical resource water located in Jackson County, Mississippi, shall adhere to General Condition 22 of the NWP's.

4. For all regulated activities that might affect a federally-listed threatened or endangered species or designated critical habitat, or essential fish habitat: Submittal of a complete PCN to the appropriate Corps District is required. Note: For activities in waters described in Regional Condition A.1., all PCNs shall instead be submitted directly to MDMR using the Joint Application and Notification form and include information required by NWP General Condition 32. Waterways in Mississippi with reported occurrences of federally-listed threatened or endangered species and their critical habitats, as of March 2017, are listed below. The list below also includes certain types of essential fish habitat (EFH) for federally-managed fisheries that may occur in coastal waterways. This list is provided to heighten awareness of the possibility of interaction between federally-protected species/habitats and regulated activities; it is not intended to be all-inclusive. Applicants are advised that the federal protection status of species and habitats may change during the time period in which these Regional Conditions are in effect, and that those changes may not be reflected in the list below.

Further, this Regional Condition does not lessen the restrictions or requirements provided by General Condition 18. As stated in General Conditions 18 and 32 (82 FR 1860-2008), the PCN from non-federal applicants must include a delineation of waters of the U.S. in the project area and 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 and Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as applicable.

NOTE: The following definitions apply to the list below, as well as the list in Section B.1. of these Regional Conditions: C = Candidate Species; CH = Critical Habitat; LE = Listed Endangered; LT = Listed Threatened; PT = Proposed Threatened; EFH = Waters and substrate necessary to MSFCMA-protected fish for spawning, breeding, feeding, or growth to maturity.

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

Bear Creek – Located in Tishomingo County
Species: cumberlandian combshell mussel (*Epioblasma brevidens* - LE, CH); slabside pearlymussel (*Lexingonia dolabelloides* - LE, CH), rabbitsfoot mussel (*Quadrula cylindrica cylindrica* - LT, CH), snuffbox mussel (*Epioblasma triquetra* - LE) and snail darter (*Percina tanas* -T)

Big Black River – Located in Hinds and Warren Counties, from Porter Creek confluence south to Highway 27
Species: rabbitsfoot mussel (*Quadrula cylindrica cylindrica* - LT, CH)

Big Sunflower River – Located in Sunflower County, from Highway 442 to Quiver River confluence
Species: rabbitsfoot mussel (*Quadrula cylindrica cylindrica* - LT, CH) and sheepnose mussel (*Plethobasus cyphus* - LE)

Bogue Chitto River – Located in Pike and Walthall Counties, from State Highway 570, southward
Species: Gulf sturgeon (*Acipenser oxyrhynchus desotoi* - LT, CH)

Mississippi River and adjacent land west of the mainline levee – Located in the following Counties: Adams, Coahoma, Jefferson, Warren, Bolivar, DeSoto, Sharkey, Washington, Claiborne, Issaquena, Tunica, and Wilkinson
Species: interior least tern (*Sterna antillarum* - LE), pallid sturgeon (*Scaphirhynchus albus* - LE), and fat pocketbook mussel (*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: Alabama red-bellied turtle (*Pseudemys alabamensis* - LE)
EFH: estuarine emergent wetlands, submersed aquatic vegetation or vegetated shallows, live bottoms (e.g. oyster bars, limestone outcroppings)

Mississippi Sound and other back bays – Located in Hancock, Harrison, and Jackson Counties
Species: piping plover (*Charadrius melodus* - LE, CH), red knot (*Calidris canutus rufa* - LT), West Indian manatee (*Trichechus manatus* - LE), green turtle (*Chelonia mydas* -

LT), Kemp's ridley turtle (*Lepidochelys kempii* - LE), leatherback sea turtle (*Dermochelys coriacea* - LE), loggerhead turtle (*Caretta caretta* - LT), and Gulf sturgeon (*Acipenser oxyrinchus desotoi* - LT, CH)

EFH: estuarine emergent wetlands, submersed aquatic vegetation or vegetated shallows, live bottoms (e.g. oyster bars, limestone outcroppings)

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, and Wayne

Species: yellow-blotched map turtle (*Graptemys flavimaculata* - LT), Gulf sturgeon (*Acipenser oxyrinchus desotoi* - LT, CH), pearl darter (*Percina aurora* - PT), and Alabama red-bellied turtle (*Pseudemys alabamensis* - LE)

EFH: estuarine emergent wetlands, submersed aquatic vegetation or vegetated shallows, live bottoms (e.g. oyster bars, limestone outcroppings)

Pearl River – Located in the following Counties: Covich, Leake, Neshoba, Scott, Hinds, Madison, Pearl River, Hancock, Simpson, Lawrence, Marion, and Rankin

Species: ringed map turtle (*Graptemys oculifera* - LT), Gulf sturgeon (*Acipenser oxyrinchus desotoi* - LE, CH), and inflated heelsplitter (*Potamilus inflatus* - LT)

EFH: estuarine emergent wetlands, submersed aquatic vegetation, live bottoms (e.g. oyster bars, limestone outcroppings)

Tombigbee River and the following tributaries: Buttahatchie, Luxapalilla,

Noxubee, and Bull Mountain – Located in Itawamba, Lowndes and Monroe Counties

Species: heavy pigtoe mussel (*Pleurobema taitianum* - LE), southern combshell mussel (*Epioblasma penita* - LE), southern clubshell mussel (*Pleurobema decisum* - LE), ovate clubshell mussel (*Pleurobema perovatum* - LT), black clubshell mussel (*Pleurobema curtum* - LE), Alabama moccasinshell (*Medionidus acutissimus* - LT), orange-nacre mucket (*Lampsilis perovalis* - LT), and inflated heelsplitter (*Potamilus inflatus* - LT)

5. Supplement to General Condition 2 (Aquatic Life Movements) and General Condition 9 (Management of Water Flows)

Culverts must be of sufficient capacity to maintain expected high and low water flows and be installed at a sufficient depth to not substantially disrupt the necessary life cycle movements of aquatic life species.

B. REGIONAL CONDITIONS FOR SPECIFIC NATIONWIDE PERMITS

1. For all NWP 12 and NWP 14 regulated activities that require a PCN:

To assess all individual and cumulative impacts, complete PCNs must include a description of the anticipated direct and indirect environmental effects, including both temporary and permanent impacts at all single and complete crossings of waters of the U.S. which are a part of the total linear project.

2. NWP 12 (Utility Line Activities) and NWP 14 (Linear Transportation Projects)

Submittal of a complete PCN to the appropriate Corps District is required for all regulated activities that may directly or indirectly affect federally-listed species and/or their designated critical habitat. The list below includes some species that could be encountered along a linear project and a general description of their typical habitat types utilized. This list is provided to heighten awareness of the possibility of interaction between federally-protected species/habitats and regulated activities; it is not intended to be all-inclusive. Applicants are advised that the federal protection status of species and habitats may change during the time period in which these Regional Conditions are in effect, and that those changes may not be reflected in the list below. NOTE: For regulated activities in waters described in Regional Condition A.1., all PCNs shall instead be submitted directly to MDMR using the Joint Application and Notification form, and include information required by NWP General Condition 32. The attachment to these Regional Conditions highlights the minimum additional information needed.

Gopher tortoise (*Gopherus polyphemus* – LT), and black pine snake (*Pituophis melanoleucus lodingi* – LT) – Located in Clarke, Covington, Forrest, George, Greene, Hancock, Harrison, Jackson, Jasper, Jefferson Davis, Jones, Lamar, Marion, Pearl River, Perry, Smith, Stone, Walthall, and Wayne Counties and associated with certain upland habitats that may be adjacent to wetlands and/or other waters of the U.S.

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

Dusky gopher frog (*Rana sevosa* – LE, CH) – Located in Jackson, Forrest, Perry, and Harrison Counties and associated with isolated ephemeral (temporary) ponds/wetlands located in upland long-leaf pine habitat

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

Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii* – LE) – Located in Alcorn, Itawamba, Monroe, Prentiss, and Tishomingo Counties and associated with wetlands created by beaver ponds and other similar habitats

Gray bat (*Myotis grisescens* – LE), Indiana bat (*Myotis sodalists* – LE) and Northern Long-eared bat (*Myotis septentrionalis* – LT), – Located in counties north of Interstate 20 and associated with caves, box culverts, bridges, and/or forested uplands, wetlands, and riparian habitats (trees over 5 inches dbh)

Pondberry (*Lindera melissifolia* – LE) - Located in Bolivar, Coahoma, Holmes, Humphreys, Issaquena, Leflore, Quitman, Sharkey, Sunflower, Tallahatchie, Tunica, Warren, Washington, and Yazoo Counties and associated with bottomland hardwood wetlands

Price's potato bean (*Apios priceana* – LT) – Located in Alcorn, Chickasaw, Clay, Kemper, Lee, Lowndes, Monroe, Noxubee, Oktibbeha, Pontotoc, Prentiss, and Union Counties and associated with wooded areas that grade into creek and river bottoms

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

Wood stork (*Mycteria americana* – LT) – Located Statewide and associated with freshwater marshes, tidal pools, cypress swamps; Species does not breed in MS, foraging habitat only

White fringeless orchid (*Platanthera integrilabia* – C) – Located in Alcorn, Itawamba, Monroe, Prentiss, and Tishomingo Counties and associated with wet boggy areas at heads of streams and on seepage slopes that are partially shaded

3. NWP 21 (Surface Coal Mining Activities)

This NWP, via disavowal of water quality certification by the Mississippi Department of Environmental Quality, is considered **denied without prejudice**. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Mississippi Department of Environmental Quality.

4. NWP 44 (Mining Activities)

This NWP, via disavowal of water quality certification by the Mississippi Department of Environmental Quality, is considered **denied without prejudice**. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Mississippi Department of Environmental Quality.

C. REGIONAL CONDITIONS FOR WATER QUALITY CERTIFICATION FOR MISSISSIPPI BAND OF CHOCTAW INDIANS TRIBAL LANDS

By letter dated March 2, 2017, the Environmental Protection Agency, Region 4, acting on behalf the Mississippi Band of Choctaw Indians, issued final decisions on water quality certification for NWP activities on Mississippi Band of Choctaw Indians Tribal Lands.

D. REGIONAL CONDITIONS FOR WATER QUALITY CERTIFICATION

By letters to the Corps, dated March 6, 2017, the Mississippi Department of Environmental Quality issued its final decisions on WQC for use of each of the NWP's in Mississippi.

E. REGIONAL CONDITIONS FOR COASTAL ZONE MANAGEMENT ACT CONSISTENCY

By letter to the Corps, dated April 6, 2017, the Mississippi Department of Marine Resources issued its final decisions regarding consistency of the NWP's with the provisions of Section 307 of the Coastal Zone Management Act (as amended) and the implementing Mississippi Coastal Program.

F. NWP's NOT APPLICABLE IN MISSISSIPPI

The Vicksburg District, as Lead Corps District for Mississippi, determined that NWP 8 (Oil and Gas Structures on the Outer Continental Shelf) and NWP 24 (Indian Tribe or State Administered Section 404 Programs) are not applicable for Department of the Army permit requirements in Mississippi.

Attachment
Joint Application and Notification Form – Minimum Additional Information Requirements for NWPs, as per General Condition 32 (PCN Requirements)

(1) The PCN must include a delineation of wetlands, other special aquatic sites (e.g. mudflats, vegetated shallows, sanctuaries, refuges), and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The applicant may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the U.S. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate.

(2) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands, the applicant must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the applicant may submit a conceptual or detailed mitigation plan.

(3) If any federally listed threatened or endangered species might be affected or is in the vicinity of the regulated activity, or if the regulated activity is located in designated critical habitat, for non-federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected or might utilize the designated critical habitat that may be affected by the proposed regulated activity. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act.

(4) For a regulated activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-federal applicants the PCN must state which historic property may be affected by the proposed regulated activity or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.