# A Coastal User's Guide to the Louisiana Coastal Resources Program

A publication of the Louisiana Department of Natural Resources pursuant to National Oceanic and Atmospheric Administration Award No. NA47OZ0223

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# PURPOSE OF THIS MANUAL

## PURPOSE

The purpose of this manual is to provide an updated document which reflects the changes in legislation and regulations, and to provide essential information needed by the public concerning the Louisiana Coastal Resources Program. This manual does not replace the original Louisiana Coastal Resources Program Final Environmental Impact Statement (FEIS) which is the official program document for Federal approval pursuant to the Coastal Zone Management Act.

This manual provides concise and up-to-date information on how to apply for a coastal use permit. There is also information included concerning local (parish) programs. The first ten sections of the manual are descriptive in nature. They are followed in the Appendices by the complete regulations and requirements of the Louisiana State and Local Coastal Resources Management Act of 1978, as amended, as well as various forms needed in the application process.

As the designated lead agency for the Coastal Resources Program, the Louisiana Department of Natural Resources has compiled this information for public use and understanding of the program it is responsible for administering. As the program develops or as legislation changes, amendments to this document will be made by the Coastal Management Division.

If there are any questions regarding the information contained in this manual they may be addressed in writing to the Coastal Management Division, Department of Natural Resources, P.O. Box 44487, Baton Rouge, LA 70804-4487 or by calling 1-800-267-4019.

# INTRODUCTION

## INTRODUCTION

Louisiana has 15,000 miles of winding shoreline that extends from the Pearl River westward to the Sabine River.

The delicate coastal zone habitats, located in nineteen southern parishes, are an intricate interweaving of ecological systems. Renewable coastal resources include numerous species of wildlife, waterfowl, and wetlands that support highly productive fisheries and fur industries. Non-renewable resources are abundant, with crude oil, natural gas, sulphur, and salt being most common.

Covering 8.5 million acres, the Louisiana Coastal Zone includes large open bays and lakes, barrier islands, cheniers, and natural levee forests. The marshes, swamps, and bottomland hardwoods that sprawl inland from the Gulf of Mexico comprise 41 percent of the continental U.S. coastal wetlands.

Almost one-third of Louisiana's people live in the coastal area. For ecological, economic, and recreational reasons, this vast ecosystem is priceless. If lost, it cannot be replaced.

### THE COASTAL ZONE

Because the coastal zone is ecologically and economically among the world's richest estuarine regions, it is of vital public interest. The magnitude of the value of the Coastal Zone and the significance of sound public policies and management are underscored by the following facts:

- Louisiana has 5,000 miles of navigable waterways and a 19,000 mile inland waterway system, most of which is in the Coastal Zone.
- The state's natural gas production, much of which is in the coastal zone, ranks first in the nation.
- Shrimp and oysters are more plentiful in Louisiana waters than in any other coastal area.
- Freshwater fisheries production in Louisiana is the nation's No. 1 catch in value and poundage.
- More than a million pelts, including nutria, muskrat, beaver, mink, and otter, are usually taken each season in the coastal zone.
- Louisiana coastal marshes are North America's largest wintering ground for migratory waterfowl.
- Coastal crops of rice, sugarcane, and soybeans are valued in the hundreds of millions of dollars, annually.

Louisiana's oil and natural gas industries are important to the state's economy, providing taxes and jobs. Proven reserves of both resources are ranked among the nation's largest. Most oil and gas production activity occurs in south Louisiana and offshore in state and federal waters of the Gulf of Mexico. Louisiana's coastal zone holds abundant reserves of crude oil and natural gas and is a region of major exploration, production and refining activity.

Commercial development occurs in the Coastal Zone as a result of the high population density and includes a broad range of activities: residential communities, seafood processing plants, harbors and marinas, shipbuilding facilities and related marine industries, motels and restaurants, marsh management programs, and other interests.

Louisiana citizens benefit greatly from coastal resources. Benefits begin with the natural cycles of the wetlands, which renew wildlife habitats, nourish the food chain that supports fisheries and fur industries, build new wetlands and barrier islands to protect the coast from storms, and provide lakes, bays, and bayous for sport fishing, boating, and waterborne transportation.

## LAND LOSS

Louisiana wetlands are being lost at the rate of approximately 25 - 30 square miles a year. Nationwide, more than 100 million acres, one-half of all wetlands, have been converted to open water or other habitats since colonial times.

In Louisiana, wetlands are lost naturally through compaction and sinking, saltwater intrusion that kills vegetation, hurricane and storm damage, wind and wave erosion, lack of sedimentation, and other processes.

Man-induced losses occur from dredging and spoil disposal, levee building, canal digging, mineral extraction, agricultural practices, and industrial and urban expansion.

## LOUISIANA COASTAL RESOURCES PROGRAM

The Coastal Management Division (CMD) of the Louisiana Department of Natural Resources is charged with implementing the Louisiana Coastal Resources Program (LCRP) under authority of the State and Local Coastal Resources Management Act (SLCRMA) of 1978, as amended (LA. R.S. 49:214.21 - 214.41).

This law seeks to protect, develop, and where feasible, restore or enhance the resources of the state's Coastal Zone. Its broad intent is to encourage multiple uses of resources and adequate economic growth while minimizing adverse effects of one resource use upon another without imposing undue restrictions on any user.

Besides striving to balance conservation and resource use, the policies of the LCRP also help to resolve user conflicts, encourage Coastal Zone recreational values, and determine the future course of coastal development and conservation.

The CMD regulates development activities and manages the resources of the Coastal Zone. A Coastal Use Permit (CUP) Program has been established by the Act to help ensure the management and reasonable use of the state's coastal wetlands.

## COASTAL MANAGEMENT PROGRAMS

### 1. Permits/Mitigation Programs Branch

#### Permits Section

The Coastal Use Permit is the basic regulatory tool of CMD and is required for certain projects in the Coastal Zone, including but not limited to dredge and fill work, bulkhead construction, shoreline maintenance, and other development projects. A prime concern of the CUP Program is to regulate activities that may increase the loss of wetlands and aquatic resources, as well as to reduce conflicts between coastal resource users.

The Coastal Management Division of the Louisiana Department of Natural Resources administers the Coastal Use Permit (CUP) Program to grant permits for projects in the Coastal Zone.

Applying for a permit and processing your application are not difficult procedures, but they can take time. Application processing requires a minimum of 47 days if all necessary information is received with the application.

The CUP Program requires persons planning public, private, or commercial projects within the Coastal Zone to apply for permission to proceed with the projects. Activities frequently undertaken in the Coastal Zone by state, parish, and local governmental agencies, as well as private citizens, that may require permits include dredge and fill projects; piers, bulkheads, or other shoreline modifications; boat slips; sewage

treatment plant siting; waste-water discharge; drainage projects; pumping facilities and marsh management activities.

If an oil and gas drilling project will not cause environmental alteration, it is likely that a permit will not be required. However, in order to get a permit from the Louisiana Office of Conservation. it may be necessary for CMD to provide a statement that a CUP is not required. To have this done, send CMD a vicinity map and a drilling plat (location plotted and given in latitude and longitude) along with a letter explaining the nature of the project. If CMD approves, the statement will be forwarded to the Office of Conservation.

Mitigation Section

During the Coastal Use Permit review process the permit staff works with applicants to insure that impacts to coastal habitats are avoided and/or minimized, but activities performed in the Coastal Zone often cause unavoidable impacts, such as wetland alteration. In such cases the LCRP's goal of no net loss of wetlands due to permitted activities cannot be accomplished without offsite habitat compensation, and the Mitigation Section Staff is responsible for analyzing impacts and recommending appropriate compensation. Essentially, this means that, for every acre of wetlands unavoidably lost, an acre of wetlands must be created (or existing wetlands must be enhanced) to the extent that an additional acre of habitat value is created somewhere else. Wetlands may be created by diverting river sediment into shallow water areas to form deltas and by taking sediment from open water or elevated borrow sites and placing it into shallow water areas to levels which will support wetland plants. The habitat value of wetlands may be enhanced by managing water flow, planting desirable vegetation, and or protecting them from erosion. Some examples of the ways applicants may accomplish offsite mitigation are by performing the work themselves, combining their resources with other applicants, or contributing funding to an approved compensation project or mitigation bank.

2. Interagency Affairs Branch

Local Programs Section

Local coastal management programs give parish governments the authority to issue permits for projects of local concern in the Coastal Zone. Parish programs are first

reviewed by state and federal agencies before they may be adopted. The parish government is, in most instances, the permitting agency for projects limited to local concern. State permitting authority is still retained over uses of state concern in the Coastal Zone. To date, eight Louisiana parishes have approved Local Coastal Programs (LCP's). They are, Jefferson, Orleans, St. Bernard, Cameron, St. James, Lafourche, St. Tammany and Calcasieu.

Consistency Section

The Consistency Section determines whether the activities of governmental agencies are consistent with the LCRP. The section reviews activities for compliance with the policies, goals and objectives of LCRP, giving particular attention to environmental, economic and cultural concerns. Authority is exercised over some state and all federal agency and federally funded projects, including offshore drilling outside state waters. Federal projects include, for example, navigation, flood control, hurricane protection and freshwater diversion.

Coastal Nonpoint Pollution Control Program

The federal government has charged each coastal state with the responsibility of developing a program to reduce pollutants from "nonpoint" or widely diffuse sources that may impact the coastal waters as carried there through stormwater runoff. A statewide nonpoint source program, administered through the Louisiana Department of Environmental Quality (LDEQ), is currently in effect to protect the quality of streams, lakes, and groundwater. The coastal program is separate from LDEQ's program. The Coastal Nonpoint Pollution Control Program (CNPCP) is being developed by the staff of the Louisiana Department of Natural Resources (LDNR), the designated lead agency for this program, with input from other agencies and the public.

In the development of this program fifty (50) management measures or problem issues are being addressed. From these problem issues the staff will develop:

a) enforceable policies to help insure that the problems are tackled, and
b) Best Management Practices (BMP's) as suggested specific steps that can be taken by individual land users to help reduce the delivery of these pollutants from land to water.

For further information on this developing program, contact the Coastal Management Division at 1-800-267-4019.

Special Area Management

An area in the Coastal Zone may be nominated for designation as a special area by any person, local government, or state agency. The CMD assumes the role of advisor to the Governor in appointing a task force to recommend guidelines for the management of the area of concern. Special areas must have unique and valuable characteristics, require special management procedures, and be managed for a purpose of regional, state or national importance.

3. Support Services Branch

Enforcement and Monitoring Section

The Enforcement and Monitoring Section ensures that any unauthorized projects in the Coastal Zone are investigated and action is taken according to the Louisiana Coastal Resources Management Act. The program also monitors activities permitted by the CUP Program for compliance with permit conditions. The program also gives the secretary of DNR the authority to enforce legal and administrative procedures, including fines, cease and desist orders, and restorative or mitigation work. The field investigative staff regularly monitors the entire coastal area for compliance with permit conditions, and for unauthorized activities. There are field offices in New Orleans, Houma, Lafayette, and Lake Charles.

Public Information and Education Section

CMD's information program is designed to inform and educate the general public, business and industry about the Division's programs, policies and functions. A series of brochures, a regular newsletter, and other printed materials are also available free to the public. Among the literature available are brochures on the Coastal Use Permit Program and other CMD programs, including information on how coastal residents can help management programs succeed. Staff members are available to give slide shows as well as

make presentations to classes and other groups. Program managers are available to meet on request with persons wanting more information on CMD efforts.

Coastal Management Geographic Information System and Image Processing System

These systems are two aspects of a computer-based data storage retrieval and analysis program to determine the condition of the Louisiana coastal wetlands. Using these highly technical systems, the CMD staff can conduct routine environmental impact studies before issuing permits and can provide research for most other programs. Creation and analysis of digital maps and use of satellite imagery provide information on rapidly changing coastal habitats, allowing for effective management of the Coastal Zone.

# PROGRAM BOUNDARY

## PROGRAM BOUNDARY

### A) INTRODUCTION

The boundaries of the coastal zone are divided into four elements: the inland boundary, the seaward boundary, areas excluded from the coastal zone and interstate boundaries.

The Federal regulations require that the inland boundary include seven geographical or management elements:

- those areas the management of which is necessary to control uses which have a direct and significant impact on coastal waters;
- designated special management areas identified pursuant to the federal coastal zone management program approval regulations;
- all transitional and intertidal areas which are subject to coastal storm surge;
- beaches affected by wave action directly from the sea;
- islands;
- salt marshes and wetlands; and
- waters under saline influence.

The regulations also require that the inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether a property or an activity is located within the management area and that seaward boundaries are established as the three mile outer limit of the United States territorial sea. (See Coastal Zone Map following this section.)

### B) LOUISIANA COASTAL ZONE BOUNDARIES

#### Inland Boundary

The inland boundary for the State of Louisiana contains all or part of nineteen parishes: In general, this boundary begins at the state line of Texas and Louisiana in the west and proceeds easterly through the parishes of Calcasieu and Cameron then south through Vermilion, Iberia, St. Mary, St. Martin, Assumption, Terrebonne and Lafourche. The boundary then turns to the north to include the parishes of St. Charles, St. John the Baptist, St. James and then east again through Livingston, Tangipahoa and St. Tammany parishes to the Mississippi state line. The only parishes whose boundaries are completely within the coastal zone are the parishes of Orleans, Jefferson, St. Bernard, Plaquemines, St. John the Baptist, St. James and St. Charles.

A complete legal description of the Coastal Zone boundaries can be found in Appendix B, pages 351 - 352.

#### Interstate Boundaries

The eastern lateral boundary of the coastal zone for purposes of this program is the Louisiana-Mississippi State Line. The boundary is as defined by the U. S. Supreme Court decision rendered in the case of the State of Louisiana vs. the State of Mississippi, 201 US 1 (1906).

The western lateral boundary of the coastal area for purposes of this program is the Louisiana-Texas State Line as defined by the U. S. Supreme Court decision rendered in the case of the State of Texas vs. the State of Louisiana, 431, US 161 (1977).

Seaward Boundary

The seaward boundary of the coastal area for purposes of this program is the outer limit of the United States territorial sea. The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the state's management program may be authorized and financed. These limits are irrespective of any other claims Louisiana may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the operation of Fisheries Conservation and Management Act of 1976.

## C) EXCLUDED FEDERAL LANDS

In accordance with Section 304(a) of the Coastal Zone Management Act of 1972, all federal lands owned, leased, held in trust or whose use is otherwise subject solely to the discretion of the federal government are excluded from the Louisiana coastal zone. However, any activities or projects which are conducted within these excluded lands that have direct effects on the lands or water of Louisiana's coastal zone are subject to the consistency provisions of the CZMA.

# PROGRAM GUIDELINES

## PROGRAM GUIDELINES

The Louisiana State and Local Coastal Resources Management Act (SLCRMA) of 1978 requires decision making criteria that will protect, develop, and where feasible, restore the natural resources of the state while providing for adequate economic growth and development. In order to accomplish these sometimes conflicting goals, the guidelines are organized as a set of performance standards to evaluate the impacts of a proposed action on coastal resources.

The purpose of this section is to explain how to use these guidelines. The guidelines themselves can be found in Appendix A, pages 5 - 10. When reviewing a proposed coastal use for compliance with the LCRP, the guidelines must be read in their entirety. In making a decision as to whether or not a particular proposed use complies with the guidelines, all applicable guidelines must be considered and complied with.

§701B requires that a proposed use must conform with all applicable laws, standards, and regulations.

§701F is an informational guideline; it provides a list of those factors which will be considered in evaluating applications for permits. The guideline requires that full consideration be given to all relevant factors. It is the responsibility of the applicant to comply with the agency's requests for information.

§701G provides a general listing of impacts which the LCRP has identified as being appropriate to avoid or minimize.

In some 44 of the 94 guidelines, the term "maximum extent practicable" (often referred to as "MEP") is used. An understanding of this term and how it is utilized is an essential element of the coastal use permit decision making process. The term "MEP" is an integral part of the decision making process set forth in §701H. The purpose of this guideline is to delineate the manner in which the benefits and impacts of the proposed use, as well as available alternatives, are reviewed and balanced. This process establishes the basis upon which discretion can be exercised to achieve an appropriate balance between the need for conservation of Louisiana wetland resources and the need for continued economic growth and development. This process also establishes the mechanism by which the impacts of permitted uses may be minimized.

Nevertheless, §701H is only applicable when triggered by other guidelines in which the term

"MEP" appears. It is not applicable to any other guidelines and does not stand as a general process to be used in every case.

The use will be in compliance with the guidelines and may be permitted if, "after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in §701F, and a balancing of their relative significance," the decision maker finds that the proposed use meets all of the three following tests:

(1) "The benefits resulting from the use would clearly outweigh the adverse impacts that would result from compliance with the modified standard," and

(2) "There are no feasible and practical alternative locations, methods, or practices for the use that are in compliance with the modified standard," and

(3) "The use meets one of the following three criteria:

(a) Significant public benefits will result from the use, or;

(b) The use would serve important regional, state or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;

(c) The use is coastal water dependent."

If, but only if, the proposed use meets all three of the above criteria, may it then be permitted. If the agency determines that the use should be permitted, then permit conditions must be developed in order that adverse impacts resulting from the use are minimized.

The three tests provided for in §701H are to be carried out as follows:

The first test resembles a cost benefit analysis. However, this is not a conventional cost benefit analysis because environmental harms generally cannot be quantified in monetary terms. Therefore, the process is more in the nature of a subjective test which places heavy emphasis on the

value of the natural resources and the value to the public from the proposed use.

The second test assumes that if another location or design for a proposed use is available which would allow the use to be successfully carried out, it must be utilized. This consideration of alternatives should be similar to the process provided for under Section 102 of the National Environmental Policy Act. In considering what alternatives are feasible and practical, the decision maker must consider the alternatives legally and economically available to the particular person applying for the permit. However, the decision maker is not held to the options economically available to the applicant. The test is what alternatives would be available to a reasonable person in a normal situation. An undercapitalized applicant should not be permitted to damage or destroy important public resources when a well financed one is prevented from doing so.

The third test is made up of three criteria, only one of which must be met. The first is whether significant public benefits will result from the use. These public benefits must go to the public as a whole, not to just a few individuals in the locality, and must be measurably substantial.

The second criteria is whether the use will serve important interests of greater than local concern. This assures that those projects which are important to the region, to the state, or to the nation, are assured full consideration.

The third criterion is whether the use is coastal water dependent. This criterion recognizes that there are sometimes only a limited range of location alternatives for water dependent uses.

# APPLYING FOR A COASTAL USE PERMIT

## APPLYING FOR A COASTAL USE PERMIT (CUP)

The Coastal Use Permit (CUP) process is part of the Louisiana Coastal Resources Program (LCRP), which is an effort among Louisiana citizens, as well as state, federal and local advisory and regulatory agencies to preserve, restore and enhance Louisiana's valuable coastal resources. The purpose of the Coastal Use Permit process is to make certain that any activity affecting the Coastal Zone, such as a project that involves either dredging or filling, is performed in accordance with guidelines established in the LCRP. The guidelines are designed so that development in the Coastal Zone can be accomplished with the greatest benefit and the least amount of damage. The following information describes the steps involved in applying for a Coastal Use Permit. An application checklist is provided for the convenience of the applicant but is not a required part of the application submittal. Submitting an application for a CUP does not imply that a CUP will be required. An application is simply one step in following the Rules and Procedures for CUP's so that the Coastal Zone will be protected.

Applying for a Coastal Use Permit, and doing it correctly, is not difficult, but it does require attention to detail. Be as thorough as possible and submit all the required information with the original application. If the information and/or drawings provided are inadequate, the permitting process will be delayed. The importance of properly submitted applications cannot be overemphasized.

**Listed below are the steps necessary to ensure a correctly completed application.**

**Step 1: The Application Form:** Obtain a U.S.- Army Corps of Engineers ENG. Form 4345 permit application form and fill it out completely. A copy of ENG. Form 4345 can be obtained by contacting the Coastal Management Division at 1-800-267-4019. You can also write to the Coastal Management Division at P.O. Box 44487, Baton Rouge, LA 70804-4487 for this information. Continue on additional sheets of paper if the form does not contain enough room for complete answers, but if you do use additional sheets, please be sure to list the block number(s) which the additional sheet(s) is intended to complete.

The form has numbered blank spaces. The following is a guide as to how to fill in those blanks listed by block number:

1. - 4. **Blocks on the Top Line:** Leave these blank. This part will be filled out by CMD staff.

5. **Applicant's Name:** Complete name of the person(s) proposing to do the work, or for whom the work will be done. If the responsible party is an agency, company, or other organization, indicate the responsible officer and title.

6. **Applicant's Address:** Provide the complete address of the person(s) proposing to do the work.

7. **Applicant's Phone Nos. W/Area Code:** Provide the telephone number of your residence and place of business.

8. **Authorized Agent's Name and Title:** You may wish to have an agent or contractor represent you on the application. If you do, please list your agent's name and title here. Leave blank or enter "NA" if you do not have an agent.

9. **Agent's Address:** Enter the agent's address in this blank.

10. **Agent's Phone Nos. W/Area Code:** Enter the agent's telephone numbers.

11. **Statement of Authorization:** If you choose to use an agent or contractor, please be sure to fill out the statement of authorization, sign, and date it. If you do not do this, the CMD staff will not know for certain whether this agent is actually authorized by you. As a result, processing of your permit application will be delayed until CMD is able to verify this.

12. **Project Name or Title:** Please provide the name of the proposed project (i.e., Landmark Plaza, Burned Hills Subdivision, John Doe Well No. 1, etc.).

13. **Name of Waterbody:** If your project is on a waterbody, give the name of the waterbody. If the project is to be located on an unnamed stream, identify the named waterbody the unnamed stream enters.

14. **Project Street Address:** If your project is located at or a street address (not a box number), please list it in this blank.

15. **Location Of Project:** Put the parish in which your project is to be located in the blank labeled "county" and put "Louisiana" or "La." in the line labeled "state."

16. **Other Location Descriptions, If Known:** Enter the Section, Township, and Range of the proposed activity. Latitude and Longitude coordinates must be included for large commercial projects, but they are not required for non-commercial activities. Please be advised that in order for CMD to process your application, it must contain either Section, Township and Range or Latitude and Longitude coordinates of the activity.

17. **Directions to the Site:** Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

18. **Nature of Activity:** A detailed description of the proposed project is essential. Please describe what structures, if any, currently exist in the vicinity, in addition to the activity that is being proposed. Include dimensions/sizes of all structures that are now there as well as any that you want to construct.

19: **Project Purpose:** You need to specify the goals and objectives of your proposed project. Please indicate whether the project is for private, recreational or commercial use. Describe your anticipated benefits. Also please provide approximate dates you plan to both begin and complete all work.

20. **Reason(s) For Discharge:** If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (i.e., erosion

control, restoration of wetlands, spoil disposal, etc.).

21. **Type(s) of Material Being Discharged and the Amount Of Each Type In Cubic Yards:** A description of the volume, in cubic yards, of the type of fill to be used or material to be dredged, the source of the fill or dredged material, and how it will be deposited, is necessary. For example, is the fill from an upland site or will it be dredged from areas adjacent to the project?

22. **Surface Area In Acres Of Wetlands Or Other Waters Filled:** Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody.

23. **Is Any Portion Of The Work Already Complete:** Please place a check or "X" in the appropriate "Yes" or "No" blank. If this work was authorized by CMD under another CUP, please provide the CUP number. Please also list the Corps of Engineers permit number of the previous work Remember to clearly indicate on any maps, plats, or other drawings, what work was performed under the previous authorization. This work should be clearly marked so that CMD can distinguish between what has already been performed and what is being proposed.

24. **Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins The Waterbody:** This should include full name, street, route or P.O. Box, municipality, state, and zip code. A name only will not be enough.

25. **List Of Other Certifications Or Approval/Denials Received From Other Federal, State Or Local Agencies For Work Described In This Application:** List all approvals, certifications, denials, etc. that you have received for this proposed activity from other federal, state, or local agencies. A listing of these certifications is required for all structures, discharges, or other activities that are a part of your proposed project.

26. **Signature of Applicant or Agent:** The application should be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

**The steps required to ensure a correctly completed permit application form are continued below.**

**Step 2. Coastal Zone Management Consistency Certification:** If the following statement is not printed on the form, either write it in one of the blocks, or include it on an additional sheet of paper:

"To the best of my knowledge the proposed activity described in my permit application complies with Louisiana's approved coastal management program and will be conducted in a manner consistent with the Louisiana Coastal Resources Program."

**Step 3. Vicinity Map:** It is necessary to include a vicinity map showing the location of your project relative to the surrounding area. A copy of part of a United States Geological Survey quadrangle map with your project location clearly outlined is best, but any other map of a reasonable scale (e.g. 1:24,000) clearly depicting the project site is acceptable.

**Step 4. Drawings:** Good drawings are absolutely necessary for the processing of your application. Your drawings are used to publish a public notice and are one of the primary tools used by the CMD in evaluating your proposed activity. Inadequate or poor drawings are the primary cause of delays in acquiring a permit. It is very important that you take the time to prepare, or get someone to prepare for you, a good set of drawings. These drawings need to be accurate, reproducible, and should be drawn to scale. If you cannot provide drawings to scale, you can submit drawings that are not to scale with the dimensions of the proposed and existing features of the work area shown. Since these drawings must be reproduced for inclusion in public notices, they must be on letter-size paper (8-1/2" x 11") and must be in black and white. Drawings on larger sized paper or that use colors to show different features are not acceptable. These drawings show the minimum information needed to process a permit application. A drawing depicting the overall plan, as well as a drawing showing a cross-section of the proposed project, are both required. It is absolutely necessary to include both types of drawings in order to obtain a Coastal Use Permit. Please be sure that you include a north arrow and all dimensions for any proposed activities, as well as for those features that presently exist (clearly differentiated, but without using different colors). You need to also include mean low and mean high water shorelines referenced to mean sea level or mean gulf datums. The elevation of mean high and low water can usually be obtained from land surveyors, local engineers, or the Corps of Engineers. You may also estimate mean high and low water using your knowledge of how high and low the water usually gets in relation to the project site.

**Step 5. Landowner Notification Affidavit:** Act 970 of the 1993 Regular Session of the Louisiana Legislature requires applicants for Coastal Use Permits to notify the owner of the property where a proposed activity is to occur. Prior to a Coastal Use Permit application being considered complete, the applicant must provide the Coastal Management Division with an affidavit attesting that the landowner has been notified.

**Step 6. Before submitting the application:** Time and effort may be saved by first determining if the proposed project is in the Louisiana Coastal Zone. Projects which are not in the Coastal Zone generally do not require a Coastal Use Permit. Maps delineating the Coastal Zone are included with this manual or are available from the Coastal Management Division. If you have any questions about whether or not your project is within the Coastal Zone, you should contact the Coastal Management Division by mail for verification.

**Step 7. Where do you send the completed application?** If your activity is located in a parish without an approved local program, you must send your application to the state for processing. If your activity is located in a parish with an approved local Coastal Management Program you can send your application to either the parish coastal zone management administrator or to the state. You many consult §214.25 on page 352 of Appendix B to determine if whether your activity is of state or local concern, but if you don't know which it is, the state and/or local government will make the determination within two working days.

To submit your application to the state, send eight (8) copies of your completed application, as well as the $20.00 application fee, to the Coastal Management Division, P.O. Box 44487, Baton Rouge,

LA 70804-4487. If your activity will involve dredging or filling of wetlands, CMD will later bill you for an additional fee for processing the application, on the basis of $0.04 per cubic yard. If your proposed project is determined to be a use of local concern, your $20.00 application fee will be sent back to you and your application will be forwarded to the appropriate local coastal program administrator. If you wish to get information on how to submit your application electronically, and/or how to pay fees by alternative methods such as electronic transfer of funds or credit cards, please contact Bill Pittman at 1-800-267-4019.

To submit your application to the parish local coastal program administrator in a parish with an approved Coastal Management Program, please check with your parish CZM Coordinator for instructions. A list of those parishes with approved local coastal programs and the contact person(s) is included in Section VII of this manual.

In either case, copies of your application will be forwarded to the U.S. Army Corps of Engineers, Louisiana Department of Environmental Quality and other agencies.

**Step 8. Permit Section staff are available to discuss proposed projects:** Should you have any questions, or need assistance, please contact the CMD Permit Section at 1-800-267-4019 to discuss your project. If you desire, a pre-application conference to discuss your proposed project, possible alternatives, information required, application completeness, drawing adequacy, etc., can be scheduled. Note, however, that CMD staff are not allowed to fill out or alter any portion of your application.

## COASTAL USE PERMIT FEES

The Department of Natural Resources, Coastal Management Division (CMD) has instituted a fee schedule for the processing and evaluation of Coastal Use Permits (CUP's) and for the processing of mitigation activities under the authority of the State and Local Coastal Resources Management Act of 1978. All such fee revenue is used for the purpose of supporting the operations of CMD. A fee is collected for all CUP applications and Requests for Determination (RFD's). The fee is in two parts. Each CUP application and RFD is charged a non-refundable application fee which must accompany the application. If appropriate, a processing fee based on the total volume of material disturbed (i.e. dredge and or fill activity) may also be charged. The processing fee is based on a sliding scale of cubic yards disturbed because, as a general rule, the time devoted to processing an application increases directly with the volume of material disturbed. Therefore, the schedule is designed to collect fees proportional to the processing cost of each application. Mitigation fees are not applicable to all activities which receive CUPs, but the mitigation of unavoidable impacts to wetlands by activities permitted by CUPs is required by the LCRP.

### Application Fee

A $20.00 non-refundable application fee shall accompany each application or request for determination submitted to the Coastal Management Division (CMD). The non-refundable fee will be charged for all users of the Coastal Zone, including private citizens, commercial entities, nonprofit organizations, state and local agencies, and municipalities. If you wish to revise an activity for which you have already received a Coastal Use Permit, you must submit a new application along with the $20.00 application fee.

## Permit Processing Fee

In addition to the non-refundable application fee, a permit processing fee will be assessed according to the total volume of material dredged or used for fill. This fee will be based on a rate of $0.04 per cubic yard of dredge and/or fill material, with a maximum of $2000 for any one permit issued.

The permit processing fee will be assessed for all projects involving more than 125 cubic yards of dredge or fill material; projects over 50,000 cubic yards will be assessed the maximum processing fee of $2000. Examples of dredge and/or fill activities which require a fee include, but are not limited to:

(1) private and commercial construction of boat slips;

(2) dredge or fill associated with the construction of commercial or private bulkheads, piers, wharves, etc.;

(3) canal construction;

(4) trenching of pipelines;

(5) prop-washing;

(6) mitigation activities such as construction of levees, water control structures, plugs, etc.;

(7) maintenance dredging;

(8) dredging of water bottoms in bays and lakes for shell; and

(9) any other dredge/fill activity requiring a Coastal Use Permit.

## Mitigation Fees

Mitigation fees are required, as appropriate, for processing individual mitigation proposals, mitigation banking projects, advanced mitigation projects, and compensatory mitigation variance requests (for more details see §423.C.3.f. on page 13 of Appendix A). The mitigation fees for the above categories are found in the text of the Rules and Procedures for Mitigation (§424 in Appendix A, pages 20 - 39).

## APPLICATION CHECKLIST

____ **COMPLETED** ENG FORM 4345

____ **SIGNED AND DATED** APPLICATION FORM (APPLICANT AND/OR AGENT FOR).

____ CLEAR DESCRIPTION OF ACTIVITY/PURPOSE.

____ CUBIC YARDS OF DREDGE/FILL MATERIAL - INCLUDE SOURCE(S) OF FILL MATERLAL.

____ ALL ADJACENT PROPERTY OWNERS, LEASEES AND LANDOWNERS WHERE PROJECT TAKES PLACE. **COMPLETE ADDRESSES** (NOT JUST NAMES).

____ GIVE SECTION, TOWNSHIP, AND RANGE IF POSSIBLE.

____ NEED LATTIUDE AND LONGITUDE.

____ NEED SCALE AND DIMENSIONS ON **ALL** DRAWINGS.

____ NEED DISTANCE TO CENTERLINE OR OPPOSITE BANK OF STREAM OR WATERWAY FROM STUCTURE OR WORK SHOWN ON DRAWINGS.

____ NEED DRAWINGS WHICH CLEARLY DEPICT THE PROPOSED AND EXISTING WORK AND HIGH AND LOW WATER SHORELINES.

___ VICINITY MAP ____ PLAN VIEW ___ CROSS SECTION

____ SHOW CUBIC YARDS OF DREDGE OR FILL MATERIAL ON DRAWING(S).

____ SHOW LENGTH AND SIZE OF PIPELINE(S) ON DRAWINGS.

____ PLAN VIEW AND CROSS SECTION DRAWINGS MUST BE CONSISTENT.

____ IF USING OLD DRAWINGS TO SHOW NEW OR PROPOSED WORK FOR PERMIT, SHOW WORK COMPLETED AS **EXISTING** AND BE SURE TO REMOVE THE DESIGNATION OF "PROPOSED" WHICH WAS A CARRYOVER FOR THE ORIGINAL PERMIT.

____ INFORMATION IN COVER LETTER NEEDS TO BE CONSISTENT WITH THE APPLICATION FORM AND DRAWINGS.

____ **CLEARLY** DEFINE AND LABEL THE **LIMITS** OF DREDGING ON THE DRAWINGS.

____ **CLEARLY** DEFINE AND LABEL **PLACEMENT** OF DREDGED OR FILL MATERIAL ON DRAWINGS.

____ INCLUDE MEAN HIGH WATER AND MEAN LOW WATER REFERENCES AS TO ELEVATIONS ON THE DRAWINGS.

____ NEED 8.5" X 11" DRAWINGS FOR PUBLIC NOTICE. NO LEGAL SIZED OR OTHER OVER SIZED DRAWINGS.

____ DRAWINGS MUST BE REPRODUCEABLE. LIGHT PENCIL WIILL NOT COPY WELL ENOUGH. COLORING TO SHOW DETAILS OF PROPOSED WORK IS NOT ACCEPTABLE BECAUSE IT RARELY COPIES.

____ $20.00 APPLICATION FEE **(CHECK OR MONEY ORDER MADE OUT TO COASTAL MANAGEMENT - CASH IS NOT ACCEPTABLE.**

____ CONSISTENCY STATEMENT - ON APPLICATION FORM OR IN LETTER THAT CAN BE ATTACHED TO THE APPLICATION.

____ LANDOWNER NOTIF1CATION AFFIDAVIT

PLEASE NOTE THAT ADDITIONAL INFORMATION MAY BE REQUIRED AS PROCESSING CONTINUES. IF YOU HAVE ANY FURTHER QUESTIONS AND WOULD LIKE TO SPEAK TO AN ANALYST, CALL 1-800-267-4019.

# RULES AND PROCEDURES FOR COASTAL USE PERMITS

## RULES AND PROCEDURES FOR COASTAL USE PERMITS

The coastal use permit regulations provide requirements and procedures for the issuance, denial, renewal, modification, and revocation of coastal use permits and mitigation of impacts. A complete copy of these rules and procedures is included in Appendix A - Title 43, pages 10 - 41.

### Permit Activities

A coastal use permit is required for various activities in the coastal zone including but not limited to such uses as dredging or filling of discharges of dredged or fill material; levee siting, construction, operation and maintenance; hurricane and flood protection facilities; urban developments; energy development activities; mining activities; shoreline modification; recreational developments; and industrial developments. (See complete list in Appendix A) Some activities do not require coastal use permits. These include but are not limited to such activities as agricultural, forestry, and aquaculture activities in areas that have consistently had these activities in the past; maintenance and repair of existing structures; construction of a residence or camp; and construction and modification of navigation aids. Activities occurring on lands five feet or more above sea level or in fastlands are generally exempted from the regulations with exceptions as clarified in Title 43.

### Permit Applications

The coastal use permit regulations contain the procedures for permit application, their issuance or denial. Appropriate fees will be assessed for each application by the administering agency, either the Coastal Management Division of the Louisiana Department of Natural Resources or the administrator of a local (parish) program. The permit application is processed by the administering agency with a possible public hearing held. With all information gathered, the administering agency will determine the acceptability of the proposed coastal use permit.

### Modification, Suspension or Revocation of Permits

There is provision in the regulations for modification, suspension or revocation of permits. Modifications allow for changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in

conformity with the coastal management program. Suspension of a permit may occur if the permittee fails to comply with the conditions stipulated in the permit or submits false or incomplete information to obtain the permit. A permit may be revoked by the administering agency if warranted after compliance with suspension procedures stipulated in the Act. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by Sec.214.36 of the SLCRMA.

General Permits

General permits may be issued by the administering agency for the area. These permits are for clearly described categories of uses requiring coastal use permits. After a general permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-case basis, that the public interest requires full review. General permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

Local Coastal Permits

An application for a permit may be filed with a local government with an approved local coastal program. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the Secretary of the LDNR within two (2) working days of receipt of the apparently complete application. The Secretary shall review the decision and rationale and shall let it stand or reverse it. If the Secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal, shall be sent to the local government within two (2) working days of receipt of the application from the local government. The appropriate permitting body for the use, as determined by the Secretary, shall thereafter be responsible for the permit review process.

Any person who proposes to conduct an activity may submit a request, in writing, to the Secretary for a formal finding as to whether the proposed activity is a use of state or local concern

within the coastal zone, subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the Secretary as may be appropriate.

Permit Determinations

Only the Secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting. If the determination is that a coastal use permit is required, processing of the application may be commenced or continued. If the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity, provided that the Secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented, is significantly different from that shown on the request or application, or does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation or failure to comply with any cease and desist or other lawful order of the Secretary.

Permit Extensions

There are provisions for obtaining permit extensions in the Rules and Procedures for Coastal Use Permits (§723.D.5.). Extension of permit terms will be considered on a case-by-case basis.

Mitigation Rules

The Coastal Management Regulations also contain provisions for mitigation and mitigation fees. Please refer to §724 of the Coastal Management Regulations for further information.

# LOCAL COASTAL PROGRAMS

## LOCAL COASTAL PROGRAMS

The national Coastal Zone Management Act provides that states may delegate coastal zone management authority to local governments, and the Louisiana State and Local Coastal Resources Management Act (SLCRMA) has provisions which allow parish governments to assume authority over certain types of coastal uses. However, in order to obtain this authority, parishes need to develop a local coastal management plan which must be approved by the state and federal coastal management agencies. (Please refer to Appendix A, pages 41 - 44 for local program approval regulations.) Once a parish program has been approved, it officially becomes part of the Louisiana Coastal Resources Program, and it then regulates "uses of local concern" as defined in SLCRMA (see pages 352 and 353, Appendix B).

A parish which has an approved program has its own permitting authority and fee schedule. Although it is recommended that a permit application be submitted to the agency with permitting authority over that particular use, an application for an activity in a parish with an approved program may be submitted to either that parish or to the state. In such cases the state and parish communicate with each other, quickly determine (within two working days) which agency has jurisdiction over the activity, and notify the applicant accordingly. It should be noted that the state retains jurisdiction over all uses in parishes which do not have approved local programs.

There are nineteen parishes which are either partially or entirely within the boundary of the Louisiana Coastal Zone, but only eight of these parishes have approved coastal programs. A list of those parishes and names, addresses, and telephone numbers of contact personnel follow:

| Mailing Address | Physical Address and Fees |
|---|---|
| **Calcasieu Parish**<br>Ms. Pam Sturrock, Planning Mgr.<br>Office of Parish Planning and Development<br>Calcasieu Parish Police Jury<br>P.O. Drawer 3287<br>Lake Charles, LA 70602<br>Phone: (318) 437-3511<br>Fax: (318) 437-3399 | Police Jury Building<br>1015 Pithon Street<br>Lake Charles, LA<br>Application Fee: $50.00 |

| Mailing Address | Physical Address and Fees |
| --- | --- |
| **Cameron Parish**<br>Ms. Tina Horn<br>Mr. Miles Hebert<br>Cameron Parish Police Jury<br>P.O. Box 366<br>Cameron, LA 70631<br>Phone: (318) 755-5718<br>Fax: (318) 775-5567 | Cameron Police Jury Annex Building<br>Courthouse Square<br>Cameron, LA<br>Application Fee: $0.00 |
| **Jefferson Parish**<br>Ms. Marnie Winter<br>Ms. Gulser Wood<br>1221 Elmwood Park Blvd., Suite 703<br>Harahan, LA 70123<br>Phone: (504) 736-6440<br>Fax: (504) 736-6445 | 1221 Elmwood Park Blvd., Suite 703<br>Harahan, LA 70123<br>Contact their office for current fee schedule |
| **Lafourche Parish**<br>Mr. Cullen Curole, CZM Administrator<br>Mr. Brent Duet, Field Investigator<br>Lafourche Parish Council<br>101 West 112th Street<br>Cutoff, LA 70345<br>Phone: (504) 632-4666<br>Fax: (504) 632-8653 | Galliano Annex Building<br>101 West 112th Street<br>Cutoff, LA 70345<br>Application Fee: $50.00 |
| **Orleans Parish**<br>Mr. Harvey Stern<br>New Orleans City Planning Commission<br>City Hall Civic Center, Room 9W<br>1300 Perdido Street<br>New Orleans, LA 70112<br>Phone: (504) 565-7000<br>Fax: (504) 565-6143 | City Hall Civic Center, Room 9W<br>1300 Perdido Street<br>New Orleans, LA<br>Contact their office for current fee schedule. |

| Mailing Address | Physical Adress and Fees |
| --- | --- |
| **St. Bernard Parish**<br>Mr. Mike Hunnicutt<br>Mr. Chris Andry<br>St. Bernard Parish Planning Commission<br>8201 West Judge Perez Drive<br>Chalmette, LA 70043<br>Phone: (504) 278-4303<br>Fax: (504) 278-4298 | 8201 West Judge Perez Drive<br>Chalmette, LA<br>Contact their office for current fee schedule. |
| **St. James Parish**<br>Mr. Jody Chenier<br>St. James Parish Council<br>P.O. Box 106<br>Convent, LA 70723<br>Phone: (504) 562-7431<br>Fax: (504) 562-2279 | St. James Parish Council<br>5800 LA Highway 44<br>Convent, LA<br>Application Fee: $0.00 |
| **St. Tammany Parish**<br>Mr. Brian Fortson<br>Department of Development<br>P.O. Box 628<br>Covington, LA 70434<br>Phone: (504) 898-2529<br>Fax: (504) 898-5237 | Courthouse Annex<br>428 East Boston Street<br>Covington, LA<br>Application Fee: $30.00 |

# FEDERAL COASTAL ZONE MANAGEMENT CONSISTENCY APPEAL PROCEDURES

## FEDERAL COASTAL ZONE MANAGEMENT CONSISTENCY APPEAL PROCEDURES

The National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce has promulgated federal consistency regulations which provide for a right of appeal, under certain circumstances, to the Secretary of the United States Department of Commerce (15 CFR, Chapter IX, §930.120 - §930.134). The objective of these regulations is to provide procedures under which the Secretary may find that a federal license or permit activity, which is inconsistent with a state management program, may be federally approved because the activity is determined to be consistent with the objectives or purposes of the federal Coastal Zone Management Act (16 USC §1451 et seq.), or is necessary in the interest of national security (§930.120). This appeal procedure is initiated by the filing of a notice of appeal with the Secretary within 30 days of the receipt of the state agency objection.[1] (§930. 125). The term "consistent with the objectives or purposes of the Act" describes a federal license or permit activity, or a federal assistance activity which, although inconsistent with a state's management program, is found by the Secretary to be permissible because it satisfies four criteria:

(a) the activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the Act,

(b) when performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) there is no reasonable alternative available (e.g., location, design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

The regulation further provides that the Secretary's decision shall constitute final agency action for purposes of the federal Administrative Procedures Act (§930.130).

[1] It should be noted that a state agency objection can be a permit denial or a "forced" withdrawal of a permit application. In the event that the Secretary of the Department of Commerce overrules the state's federal consistency determination, the proposed use can then be approved by federal permitting agencies, but the state permit decision still remains in effect.

# SPECIAL AREAS

## SPECIAL AREAS

Two special management areas are included in the LCRP. They are those areas subject to the jurisdiction of the Offshore Terminal Authority and the Marsh Island Wildlife Refuge.

### Offshore Terminal Authority

The Louisiana Offshore Oil Port (LOOP or Superport) was nominated as a "special area" because of the unique needs and problems associated with deepwater marine terminals. The superport area requires management guidelines that are specific to the superport and the area affected by it.

The Superport Special Management Area is the corridor of the pipeline within the jurisdiction of the Louisiana Offshore Terminal Authority between the LOOP Offshore Terminal and the St. James Terminal on the Mississippi River. For purposes of the federal Act, only the area of the corridor within the boundary of the coastal zone will be considered a special management area. All aspects of operations between the LOOP and the St. James Terminal are subject to the Superport Environmental Protection Plan (Louisiana Offshore Terminal Authority, 1977). The area in which the regulatory jurisdiction of the Louisiana Offshore Terminal Authority applies is the right-of-way secured by the operators of the main pipeline within the pipeline alignments specified in the application submitted to the Offshore Terminal Authority. The exact boundaries of the special management area may be changed by order of the Authority upon application by the licensee. Facilities other than those operated in connection with LOOP which tie into the LOOP pipelines will only be subject to the Superport Environmental Protection Plan at the point of their connection with the main pipeline.

### Marsh Island Wildlife Refuge and Game Preserve

The island, located in the southern part of Iberia Parish, covers approximately 73,000 acres of land. Marsh Island is an important natural area for birds and wildlife. Wading birds such as heron, egrets, ibises and anhingas use this protected area as a rookery. The wildlife refuge is also a habitat for the American alligator and for large concentrations of ducks and geese.

Public use of Marsh Island is not permitted. It is a trespass and a criminal offense for any member of the public to go upon the refuge without the State's consent. A one mile buffer zone, designed to prevent trespassing from nearby recreation areas into the wildlife refuge, exists around Marsh Island.

For more information on special areas see Appendix B, page 356.

# PUBLIC HEARINGS

## PUBLIC HEARINGS

A public hearing process is included in the Coastal Management Regulations (see Appendix A, pages 44 and 45).

This process provides an opportunity to the public to participate in the review of Coastal Zone Permit applications. If it is determined that a public hearing will be held on a pending permit application, notice will be given at least thirty (30) days in advance of the hearing. The notice will contain the time and place for the hearing, and the location of materials that are available for public examination.

Any person may appear at a public hearing. Oral or written statements may be submitted concerning the subject matter of the hearing. These statements may be submitted for up to ten days following the public hearing.

All public hearings are recorded and transcribed verbatim. The transcript of these hearings will be made available to the public for inspection or purchase.

All information received through the public hearing process will be used to evaluate the proposed coastal zone permit application.

# APPENDICES

# APPENDICES

Included in this section are the following:

A. CHAPTER 7, TITLE 43 - COASTAL MANAGEMENT REGULATIONS

B. R.S.49:214.21 SUBPART C - LOUISIANA COASTAL RESOURCES PROGRAM LEGISLATION

C. SAMPLE FORMS

Appendix A and Appendix B provide the most recent legislation regarding the Louisiana State and Local Coastal Resources Management Program, with amendments to date.

Appendix C includes the Affidavit of Notification to Owner of Property, the ENG Form 4345 - Application for Department of the Army Permit, and sample drawings for the permit application.

# APPENDIX A

# TITLE 43 - NATURAL RESOURCES

# LOUISIANA
# ADMINISTRATIVE CODE

# Title 43
# NATURAL RESOURCES

## Part I. Office of the Secretary

## Chapter 7. Coastal Management

**Certified by the Office of the State Register**

*Edited and compiled through* June 1996)
(*Last amended August 1995*)

M.J. "Mike" Foster, Jr.
Governor

Mark C. Drennen
Commissioner of Administration

# Title 43
# NATURAL RESOURCES
# Part I. Office of the Secretary

## Chapter 7. Coastal Management
## Subchapter A. Definitions

### §700. Definitions

*Administrator*—the administrator of the Coastal Management Division of the Department of Natural Resources.

*Advanced Mitigation Project*—a project implemented to create, restore, protect, and/or enhance wetlands for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (advanced mitigation credits). Such projects must be approved by the secretary prior to implementation, and the advanced mitigation credits shall have limited utility for the purpose of compensating for the ecological values lost due to a permitted activity.

*Affected Landowner*—the owner of the land on which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

*Affected Parish*—the parish in which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

*After-the-Fact Permit*—a coastal use permit which is issued after the commencement of a use. Such a permit may only be issued after all legal issues resulting from the commencement of a use without a coastal use permit have been resolved.

*Alterations of Waters Draining in Coastal Waters*—those uses or activities that would alter, change, or introduce polluting substances into runoff and thereby modify the quality of coastal waters. Examples include water control impoundments, upland and water management programs, and drainage projects from urban, agricultural and industrial developments.

*Approved Local Program*—a local coastal management program which has been and continues to be approved by the secretary pursuant to 214.28 of the State and Local Coastal Resources Management Act (SLCRMA).

*Average Annual Habitat Unit*—a unit of measure of ecological value; average annual habitat units are calculated by the formula: (sum of cumulative habitat units for a given project scenario) / (project years).

*Best Practical Techniques*—those methods or techniques which would result in the greatest possible minimization of the adverse impacts listed in §701.G and in specific guidelines applicable to the proposed use. Those methods or techniques shall be the best methods or techniques which are in use in the industry or trade or among practitioners of the use, and which are feasible and practical for utilization.

*Coastal Use Permit*—a permit required by 214.30 of the SLCRMA. The term does not mean or refer to, and is in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

*Coastal Water Dependent Uses*—those which must be carried out on, in or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods. Examples include surface and subsurface mineral extraction, fishing, ports and necessary supporting commercial and industrial facilities, facilities for the construction, repair and maintenance of vessels, navigation projects, and fishery processing plants.

*Coastal Waters*—those bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).

*Coastal Zone*—the term "coastal zone" shall have the same definition as provided in 214.24 of the SLCRMA.

*Compensatory Mitigation*—replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity.

*Conservation Servitude*—as defined at R.S. 9:1272.(1), means a nonpossessory interest of a holder in immovable property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of immovable property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

*Contaminant*—an element causing pollution of the environment that would have detrimental effects on air or water quality or on native floral or faunal species.

*Corps*—the U.S. Army Corps of Engineers.

*Cumulative Impacts*—impacts increasing in significance due to the collective effects of a number of activities.

*Cumulative Habitat Unit*—a unit of measure of ecological value; for each time interval within the project years,

cumulative habitat units are calculated by the formula: CHUs $= (T_2 - T_1) \times \{[(A_1 \times HSI_1 + A_2 \times HSI_2) / 3] + [(A_2 \times HSI_1 + A_1 \times HSI_2) / 6]\}$, where $T_1$ = first year of time interval, $T_2$ = last year of time interval, $A_1$ = acres of habitat at beginning of time interval, $A_2$ = acres of habitat at end of time interval, $HSI_1$ = habitat suitability index at beginning of time interval, and $HSI_2$ = habitat suitability index at end of time interval; the source of this formula is the U.S. Fish and Wildlife Service's Ecological Services Manual 102, Habitat Evaluation Procedures.

*Department*—the Department of Natural Resources.

*Development Levees*—those levees and associated water control structures whose purpose is to allow control of water levels within the area enclosed by the levees to facilitate drainage or development within the leveed areas. Such levee systems also commonly serve for hurricane or flood protection, but are not so defined for purposes of these guidelines.

*Direct and Significant Impact*—a direct and significant modification or alteration in the physical or biological characteristics of coastal waters which results from an action or series of actions caused by man.

*Ecological Value*—the ability of an area to support vegetation and fish and wildlife populations.

*Endangered Species*—as defined in the Endangered Species Act, as amended, any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary of the U.S. Department of Interior to constitute a pest whose protection under the provisions of the Endangered Species Act, as amended, would present an overwhelming and overriding risk to man.

*Expectable Adverse Conditions*—natural or man-made hazardous conditions which can be expected or predicted to occur at regular intervals. Included are such events as 125 mile per hour hurricanes and associated tides, 100 year floods and reasonably probable accidents.

*Fastlands*—lands surrounded by publicly-owned, maintained, or otherwise validly existing levees or natural formations as of January 1, 1979, or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.

*Feasible and Practical*—those locations, methods and/or practices which are of established usefulness and efficiency and allow the use or activity to be carried out successfully.

*Federal Advisory Agencies*—include, but are not limited to, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the U.S. Natural Resources Conservation Service.

*Force Majeure*—an act of God, war, blockade, lightning, fire, storm, flood, and any other cause which is not within the control of the party claiming force majeure.

*Future with Project Scenario*—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would be implemented.

*Future without Project Scenario*—portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would not be implemented.

*Geologic Review Procedure*—a process by which alternative methods, including alternative locations, for oil and gas exploration are evaluated on their environmental, technical, and economic merits on an individual basis; alternative methods, including alternative locations, of oil and gas production and transmission activities which are specifically associated with the proposed exploration activity shall also be evaluated in this process. These alternative methods, including alternative locations, are presented and evaluated at a meeting by a group of representatives of the involved parties. A geologic review group is composed, at a minimum, of representatives of the applicant, a petroleum geologist and a petroleum engineer representing the Coastal Management Division and/or the New Orleans District Corps of Engineers, and a representative of the Coastal Management Division Permit Section, and may include, but is not limited to, representatives of the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

*Governmental Body*—any public department, agency, bureau, authority, or subdivision of the government of the United States or the state of Louisiana and shall include parishes and municipalities and subdivisions thereof and those governmental agencies constitutionally established.

*Guidelines*—those rules and regulations adopted pursuant to 214.27 of the SLCRMA.

*Habitat*—the natural environment where a plant or animal population lives.

*Habitat Types*—the general wetland vegetative communities which exist in the Louisiana Coastal Zone, including fresh marsh, intermediate marsh, brackish marsh, saline marsh, fresh swamp, and bottomland hardwoods.

*Holder*—as defined at R.S. 9:1272.(2), means (1) a governmental body empowered to hold an interest in immovable property under the laws of this state or the United States; or (2) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of immovable property, assuring the availability of immovable property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or

enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

*Hurricane or Flood Protection Levees*—those levees and associated water control structures whose primary purpose is to prevent occasional surges of flood or storm generated high water. Such levee systems do not include those built to permit drainage or development of enclosed wetland areas.

*Hydrologic and Sediment Transport Modifications*—those uses and activities intended to change water circulation, direction of flow, velocity, level, or quality or quantity of transported sediment. Examples include locks, water gates, impoundments, jetties, groins, fixed and variable weirs, dams, diversion pipes, siphons, canals, and surface and groundwater withdrawals.

*Hydrologic Basin*—one of the nine general drainage areas within the Louisiana Coastal Zone as delineated on pages A-2 and A-3 of the Louisiana Coastal Wetlands Conservation and Restoration Plan, April 1990.

*Impoundment Levees*—those levees and associated water control structures whose primary purpose is to contain water within the levee system either for the prevention of the release of pollutants, to create fresh water reservoirs, or for management of fish or wildlife resources.

*Infrastructure*—those systems which provide needed support for human social institutions and developments, including transportation systems, public utilities, water and sewerage systems, communications, educational facilities, health services, law enforcement and emergency preparedness.

*In-lieu Permit*—those permits issued in-lieu of coastal use permits pursuant to 214.31 of the SLCRMA.

*Levees*—any use or activity which creates an embankment to control or prevent water movement, to retain water or other material, or to raise a road or other lineal use above normal or flood water levels. Examples include levees, dikes and embankments of any sort.

*Linear Facilities*—those uses and activities which result in creation of structures or works which are primarily linear in nature. Examples include pipelines, roads, canals, channels, and powerlines.

*Local Government*—a governmental body having general jurisdiction and operating at the parish level.

*Local Program*—same as approved local program.

*Marsh*—wetlands subject to frequent inundation in which the dominant vegetation consists of reeds, sedges, grasses, cattails, and other low growth.

*Minerals*—oil, gas, sulfur, geothermal, geopressured, salt, or other naturally occurring energy or chemical resources which are produced from below the surface in the coastal zone. Not included are such surface resources as clam or oyster shells, dirt, sand, or gravel.

*Mitigation*—all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

*Mitigation Bank*—an area identified, with specific measures implemented to create, restore, protect, and/or enhance wetlands, for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (mitigation credits). Those credits may be donated, sold, traded, or otherwise used for the purpose of compensating for the ecological values lost due to a permitted activity.

*Off-site*—not within or adjoining the area directly modified by the permitted activity and not directly related to implementation of the permitted activity.

*Oil, Gas and Other Mineral Activities*—those uses and activities which are directly involved in the exploration, production, and refining of oil, gas, and other minerals. Examples include geophysical surveying, establishment of drill sites and access to them, drilling, on site storage of supplies, products and waste materials, production, refining, and spill cleanup.

*On-site*—within or adjoining the area directly modified by the permitted activity or directly related to implementation of the permitted activity.

*Overriding Public Interest*—the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production, and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

*Particular Areas*—areas within the coastal zone of a parish with an approved local program which have unique and valuable characteristics requiring special management procedures. Such areas shall be identified, designated, and managed by the local government following procedures consistent with those for special areas.

*Permit*-a coastal use permit, or an in-lieu permit.

*Permitting Body*—either the Department of Natural Resources or a local government with an approved local program with authority to issue, or that has issued, a coastal use permit authorized by the SLCRMA.

*Person*—any natural individual, partnership, association, trust, corporation, public agency or authority, governmental body, or any other legal or juridical person created by law.

*Project Years*—the anticipated number of years that the proposed activity would have a negative or positive impact on the ecological value of the site. Project years shall be 20 years for marsh habitats and 50 years for forested habitats, unless it is clearly demonstrated by the applicant and accepted by the secretary to be shorter in duration.

*Public Hearing*—a hearing announced to the public at least 30 days in advance, at which all interested persons shall be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing. At the time of the announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.

*Radioactive Wastes*—wastes containing source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

*Secondary Impact*—an impact which would (1) result from the proposed activity, (2) cause significant modifications or alterations to the physical characteristics of acreage beyond the limit of the area depicted as being altered in the accepted permit application drawings, and (3) be identified and quantified by the secretary based on an evaluation of similar and previously implemented activities.

*Secretary*—the secretary of the Department of Natural Resources, or his designee.

*Sediment Deposition Systems*—controlled diversions of sediment-laden water in order to initiate land building or sediment nourishment or to minimize undesirable deposition of sediment in navigation channels or habitat areas. Typical activities include diversion channels, jetties, groins, or sediment pumps.

*Shoreline Modifications*—those uses and activities planned or constructed with the intention of directly or indirectly changing or preventing change of a shoreline. Examples include bulkheading, piers, docks, wharves, slips, and short canals, and jetties.

*SLCRMA*—the State and Local Coastal Resources Management Act of 1978, Act 361 of 1978 as amended, R.S. 49:214.21-214.40.

*Spoil Deposition*—the deposition of any excavated or dredged material.

*State Advisory Agencies*—include, but are not limited to, the Louisiana Department of Wildlife and Fisheries and the Louisiana Department of Environmental Quality.

*Surface Alterations*—those uses and activities which change the surface or usability of a land area or water bottom. Examples include fill deposition, land reclamation, beach nourishment, dredging (primarily areal), clearing, draining, surface mining, construction and operation of transportation, mineral, energy and industrial facilities, and industrial, commercial, and urban developments.

*Third Party Right of Enforcement*—as defined at R.S. 9:1272.(3), means a right provided in a conservation servitude to enforce any of the terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

*Toxic Substances*—those substances which, by their chemical, biological or radioactive properties, have the potential to endanger human health or other living organisms or ecosystems, by means of acute or chronic adverse effects, including poisoning, mutagenic, teratogenic, or carcinogenic effect.

*Unavoidable Net Loss of Ecological Values*—the net loss of ecological value that is anticipated to occur as the result of a permitted/authorized activity, despite all efforts, required by the guidelines, to avoid, minimize, and restore the permitted/authorized impacts.

*Uplands*—lands 5 feet or more above sea level, fastlands, or all lands outside the coastal zone.

*Use*—any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

*Waste*—any material for which no use or reuse is intended and which is to be discarded.

*Waste Disposal*—those uses and activities which involve the collections, storage and discarding or disposing of any solid or liquid material. Examples include littering; landfill; open dumping; incineration; industrial waste treatment facilities; sewerage treatment; storage in pits, ponds, or lagoons; ocean dumping and subsurface disposal.

*Water or Marsh Management Plan*—a systematic development and control plan to improve and increase biological productivity, or to minimize land loss, saltwater intrusion, erosion or other such environmental problems, or to enhance recreation.

*Wetlands*—

1. for the purposes of this Chapter except for §724, open water areas or areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions;

2. for the purposes of §724 (as defined in R.S. 49:214.41), an open water area or an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, but specifically excluding fastlands and lands more than 5 feet above sea level which occur in the designated coastal zone of the state. Wetlands generally include swamps, marshes, bogs, and similar areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

## Subchapter B. Coastal Use Guidelines

Coastal use guidelines as approved by the House Natural Resources Committee on July 9, 1980, the Senate Natural Resources Committee on July 11, 1980, and the governor on July 24, 1980.

### §701. Guidelines Applicable to all Uses

A. The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.

B. Conformance with applicable water and air quality laws, standards and regulations, and with those other laws, standards and regulations which have been incorporated into the coastal resources program shall be deemed in conformance with the program except to the extent that these guidelines would impose additional requirements.

C. The guidelines include both general provisions applicable to all uses and specific provisions applicable only to certain types of uses. The general guidelines apply in all situations. The specific guidelines apply only to the situations they address. Specific and general guidelines should be interpreted to be consistent with each other. In the event there is an inconsistency, the specific should prevail.

D. These guidelines are not intended to nor shall they be interpreted so as to result in an involuntary acquisition or taking of property.

E. No use or activity shall be carried out or conducted in such a manner as to constitute a violation of the terms of a grant or donation of any lands or waterbottoms to the State or any subdivision thereof. Revocations of such grants and donations shall be avoided.

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.

H. In those guidelines in which the modifier "maximum extent practicable" is used, the proposed use is in compliance with the guideline if the standard modified by the term is complied with. If the modified standard is not complied with, the use will be in compliance with the guideline if the permitting authority finds, after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in Subsection F above, and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard and:

1. significant public benefits will result from the use, or;

2. the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;

3. the use is coastal water dependent.

The systematic consideration process shall also result in a determination of those conditions necessary for the use to be in compliance with the guideline. Those conditions shall assure that the use is carried out utilizing those locations, methods, and practices which maximize conformance to the modified standard; are technically, economically, environmentally, socially, and legally feasible and practical; and minimize or offset those adverse impacts listed in §701.G and in the Subsection at issue.

I. Uses shall to the maximum extent practicable be designed and carried out to permit multiple concurrent uses which are appropriate for the location and to avoid unnecessary conflicts with other uses of the vicinity.

J. These guidelines are not intended to be, nor shall they be, interpreted to allow expansion of governmental authority beyond that established by R.S. 49:214.21-49:214.41, as amended; nor shall these guidelines be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§703. Guidelines for Levees**

A. The leveeing of unmodified or biologically productive wetlands shall be avoided to the maximum extent practicable.

B. Levees shall be planned and sited to avoid segmentation of wet-land areas and systems to the maximum extent practicable.

C. Levees constructed for the purpose of developing or otherwise changing the use of a wetland area shall be avoided to the maximum extent practicable.

D. Hurricane and flood protection levees shall be located at the nonwetland/wetland interface or landward to the maximum extent practicable.

E. Impoundment levees shall only be constructed in wetland areas as part of approved water or marsh management projects or to prevent release of pollutants.

F. Hurricane or flood protection levee systems shall be designed, built and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§705. Guidelines for Linear Facilities**

A. Linear use alignments shall be planned to avoid adverse impacts on areas of high biological productivity or

irreplaceable resource areas.

B. Linear facilities involving the use of dredging or filling shall be avoided in wetland and estuarine areas to the maximum extent practicable.

C. Linear facilities involving dredging shall be of the minimum practical size and length.

D. To the maximum extent practicable, pipelines shall be installed through the "push ditch" method and the ditch backfilled.

E. Existing corridors, rights-of-way, canals, and streams shall be utilized to the maximum extent practicable for linear facilities.

F. Linear facilities and alignments shall be, to the maximum extent practicable, designed and constructed to permit multiple uses consistent with the nature of the facility.

G. Linear facilities involving dredging shall not traverse or adversely affect any barrier island.

H. Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs, or other natural gulf shoreline unless no other alternative exists. If a beach, tidal pass, reef, or other natural gulf shoreline must be traversed for a non-navigation canal, they shall be restored at least to their natural condition immediately upon completion of construction. Tidal passes shall not be permanently widened or deepened except when necessary to conduct the use. The best available restoration techniques which improve the traversed area's ability to serve as a shoreline shall be used.

I. Linear facilities shall be planned, designed, located, and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow, and water quality and to minimize adverse impacts on wetlands.

J. Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.

K. All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs shall be properly maintained.

L. The multiple use of existing canals, directional drilling, and other practical techniques shall be utilized to the maximum extent practicable to minimize the number and size of access canals, to minimize changes of natural systems, and to minimize adverse impacts on natural areas and wildlife and fisheries habitat.

M. All pipelines shall be constructed in accordance with parts 191, 192, and 195 of Title 49 of the Code of Federal Regulations, as amended, and in conformance with the Commissioner of Conservation's Pipeline Safety Rules and Regulations and those safety requirements established by R.S. 45:408, whichever would require higher standards.

N. Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable.

O. The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.

P. Confined and dead end canals shall be avoided to the maximum extent practicable. Approved canals must be designed and constructed using the best practical techniques to avoid water stagnation and eutrophication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§707. Guidelines for Dredged Spoil Deposition**

A. Spoil shall be deposited utilizing the best practical techniques to avoid disruption of water movement, flow, circulation, and quality.

B. Spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Otherwise, existing spoil disposal areas or upland disposal shall be utilized to the maximum extent practicable rather than creating new disposal areas.

C. Spoil shall not be disposed of in a manner which could result in the impounding or draining of wetlands or the creation of development sites unless the spoil deposition is part of an approved levee or land surface alteration project.

D. Spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable.

E. Spoil shall not be disposed of in such a manner as to create a hindrance to navigation or fishing, or hinder timber growth.

F. Spoil disposal areas shall be designed and constructed and maintained using the best practical techniques to retain the spoil at the site, reduce turbidity, and reduce shoreline erosion when appropriate.

G. The alienation of state-owned property shall not result from spoil deposition activities without the consent of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§709. Guidelines for Shoreline Modification**

A. Nonstructural methods of shoreline protection shall be utilized to the maximum extent practicable.

B. Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts.

C. Shoreline modification structures shall be lighted or marked in accordance with U.S. Coast Guard regulations, not interfere with navigation, and should foster fishing, other recreational opportunities, and public access.

D. Shoreline modification structures shall be built using best practical materials and techniques to avoid the introduction of pollutants and toxic substances into coastal waters.

E. Piers and docks and other harbor structures shall be designed and built using best practical techniques to avoid obstruction of water circulation.

F. Marinas and similar commercial and recreational developments shall to the maximum extent practicable not be located so as to result in adverse impacts on open productive oyster beds, or submersed grass beds.

G. Neglected or abandoned shoreline modification structures, piers, docks, and mooring and other harbor structures shall be removed at the owner's expense, when appropriate.

H. Shoreline stabilization structures shall not be built for the purpose of creating fill areas for development unless part of an approved surface alteration use.

I. Jetties, groins, breakwaters, and similar structures shall be planned, designed, and constructed so as to avoid to the maximum extent practicable downstream land loss and erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§711. Guidelines for Surface Alterations**

A. Industrial, commercial, urban, residential, and recreational uses are necessary to provide adequate economic growth and development. To this end, such uses will be encouraged in those areas of the coastal zone that are suitable for development. Those uses shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only:

1. on lands five feet or more above sea level or within fast lands; or

2. on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered; and

a. the land is already in high intensity of development use, or

b. there is adequate supporting infrastructure, or

c. the vicinity has a tradition of use for similar habitation or development.

B. Public and private works projects such as levees, drainage improvements, roads, airports, ports, and public utilities are necessary to protect and support needed development and shall be encouraged. Such projects shall, to the maximum extent practicable, take place only when:

1. they protect or serve those areas suitable for development pursuant to §711.A.; and

2. they are consistent with the other guidelines; and

3. they are consistent with all relevant adopted state, local, and regional plans.

C. Reserved.

D. To the maximum extent practicable wetland areas shall not be drained or filled. Any approved drain or fill project shall be designed and constructed using best practical techniques to minimize present and future property damage and adverse environmental impacts.

E. Coastal water dependent uses shall be given special consideration in permitting because of their reduced choice of alternatives.

F. Areas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned, and restored to their predevelopment condition upon termination of the use.

G. Site clearing shall to the maximum extent practicable be limited to those areas immediately required for physical development.

H. Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Alterations in wildlife preserves and management areas shall be conducted in strict accord with the requirements of the wildlife management body.

I. Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes.

J. The creation of low dissolved oxygen conditions in the water or traps for heavy metals shall be avoided to the maximum extent practicable.

K. Surface mining and shell dredging shall be carried out utilizing the best practical techniques to minimize adverse environmental impacts.

L. The creation of underwater obstructions which

adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

M. Surface alteration sites and facilities shall be designed, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment and minimize other adverse impacts.

N. To the maximum extent practicable only material that is free of contaminants and compatible with the environmental setting shall be used as fill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

### §713. Guidelines for Hydrologic and Sediment Transport Modifications

A. The controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment nourishment shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

B. Sediment deposition systems may be used to offset land loss, to create or restore wetland areas or enhance building characteristics of a development site. Such systems shall only be utilized as part of an approved plan. Sediment from these systems shall only be discharged in the area that the proposed use is to be accomplished.

C. Undesirable deposition of sediments in sensitive habitat or navigation areas shall be avoided through the use of the best preventive techniques.

D. The diversion of freshwater through siphons and controlled conduits and channels, and overland flow to offset saltwater intrusion and to introduce nutrients into wetlands shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

E. Water or marsh management plans shall result in an overall benefit to the productivity of the area.

F. Water control structures shall be assessed separately based on their individual merits and impacts and in relation to their overall water or marsh management plan of which they are a part.

G. Weirs and similar water control structures shall be designed and built using the best practical techniques to prevent "cut arounds," permit tidal exchange in tidal areas, and minimize obstruction of the migration of aquatic organisms.

H. Impoundments which prevent normal tidal exchange and/or the migration of aquatic organisms shall not be constructed in brackish and saline areas to the maximum extent practicable.

I. Withdrawal of surface and ground water shall not result in saltwater intrusion or land subsidence to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

### §715. Guidelines for Disposal of Wastes

A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.

B. The generation, transportation, treatment, storage, and disposal of hazardous wastes shall be pursuant to the substantive requirements of the Department of Environmental Quality adopted pursuant to the provisions of R.S. 30:217, et seq.; as amended and approved pursuant to the Resource Conservation and Recovery Act of 1976 P.L. 94-580, as amended, and of the Office of Conservation for injection below surface.

C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.

D. Waste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.

E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.

F. All waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.

G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.

H. Waste shall be disposed of only at approved disposal sites.

I. Radioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters**

A. Upland and upstream water management programs which affect coastal waters and wetlands shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the maximum extent practicable.

B. Runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, quality, and rate of flow.

C. Runoff and erosion from agricultural lands shall be minimized through the best practical techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

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**§719. Guidelines for Oil, Gas, and Other Mineral Activities**

A. Geophysical surveying shall utilize the best practical techniques to minimize disturbance or damage to wetlands, fish and wildlife, and other coastal resources.

B. To the maximum extent practicable, the number of mineral exploration and production sites in wetland areas requiring floatation access shall be held to the minimum number, consistent with good recovery and conservation practices and the need for energy development, by directional drilling, multiple use of existing access canals, and other practical techniques.

C. Exploration, production, and refining activities shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Mineral operations in wildlife preserves and management areas shall be conducted in strict accordance with the requirements of the wildlife management body.

D. Mineral exploration and production facilities shall be to the maximum extent practicable designed, constructed, and maintained in such a manner to maintain natural water flow regimes, avoid blocking surface drainage, and avoid erosion.

E. Access routes to mineral exploration, production, and refining sites shall be designed and aligned so as to avoid adverse impacts on critical wildlife and vegetation areas to the maximum extent practicable.

F. Drilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.

G. All drilling activities, supplies, and equipment shall be kept on barges, on drilling rigs, within ring levees, or on the well site.

H. Drilling ring levees shall to the maximum extent practicable be replaced with small production levees or removed entirely.

I. All drilling and production equipment, structures, and storage facilities shall be designed and constructed utilizing best practical techniques to withstand all expectable adverse conditions without releasing pollutants.

J. Mineral exploration, production, and refining facilities shall be designed and constructed using best practical techniques to minimize adverse environmental impacts.

K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.

L. The use of dispersants, emulsifiers, and other similar chemical agents on oil spills is prohibited without the prior approval of the Coast Guard or Environmental Protection Agency on-scene coordinator, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.

M. Mineral exploration and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.

N. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

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## Subchapter C. Coastal Use Permits and Mitigation

**§723. Rules and Procedures for Coastal Use Permits**

A. General

1. Coastal Use Permits. This regulation provides the requirements and procedures for the issuance, denial, renewal, modification, suspension, and revocation of coastal use permits and general coastal use permits.

2. Permit Requirement. No use of state or local concern shall be commenced or carried out in the coastal zone without a valid coastal use permit or in-lieu permit unless the activity is exempted from permitting by the provisions of the SLCRMA or by Subsection B of this subheading. The following shall be considered as uses of state or local concern subject to the requirement of this Subparagraph:

a. dredging or filling and discharges of dredged or fill material;

b. levee siting, construction, operation, and maintenance;

c. hurricane and flood protection facilities, including the siting, construction, operation, and maintenance of such facilities;

d. urban developments, including the siting, construction or operation of residential, commercial,

industrial, and governmental structures and transportation facilities;

e. energy development activities, including any siting, construction, or operation of generating, processing and transmission facilities, pipeline facilities, and exploration for and production of oil, natural gas, and geothermal energy;

f. mining activities, including surface, subsurface, and underground mining, sand or gravel mining, and shell dredging;

g. wastewater discharge, including point and nonpoint sources;

h. surface water control or consumption, including marsh management projects;

i. shoreline modification projects and harbor structures;

j. waste disposal activities;

k. recreational developments, including siting, construction and operation of public and private recreational facilities and marinas;

l. industrial development, including siting, construction, or operation of such facilities;

m. any other activities or projects that would require a permit or other form of consent or authorization from the U.S. Army Corps of Engineers, the Environmental Protection Agency or the Louisiana Department of Natural Resources (see page 83 item 13 of the Louisiana Coastal Resources Program Final Environmental Impact Statement);

n. activities which impact barrier islands, salt domes, cheniers, and beaches;

o. drainage projects;

3. In-Lieu Permits. Coastal use permits shall not be required for the location, drilling, exploration and production of oil, gas, sulphur and other minerals subject to regulation by the Office of Conservation of the Department of Natural Resources as of January 1, 1979. The parameters and procedures of the in-lieu permit process are as provided for under existing Memorandum of Understanding between the Coastal Management Section and the Office of Conservation and the rules and procedures of the Office of Conservation.

B. Activities not Requiring Permits

1. General

a. The following activities normally do not have direct and significant impacts on coastal waters; hence, a coastal use permit is not required, except as set forth in the following clauses:

i. agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities;

ii. hunting, fishing, trapping, and the preservation of scenic historic, and scientific areas and wildlife preserves;

iii. normal maintenance or repair of existing structures including emergency repairs of damage caused by accident, fire, or the elements;

iv. construction of a residence or camp;

v. construction and modification of navigational aids such as channel markers and anchor buoys;

vi. activities which do not have a direct and significant impact on coastal waters.

b. Uses and activities within the special area established by R.S. 49:214.29(c) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan shall not require a coastal use permit.

2. Activities on Lands 5 Feet or More Above Sea Level or Within Fastlands

a. Activities occurring wholly on lands 5 feet or more above sea level or within fastlands do not normally have direct and significant impacts on coastal waters. Consequently, a coastal use permit for such uses generally need not be applied for.

b. However, if a proposed activity exempted from permitting in Subparagraph a, above, will result in discharges into coastal waters, or significantly change existing water flow into coastal waters, then the person proposing the activity shall notify the secretary and provide such information regarding the proposed activity as may be required by the secretary in deciding whether the activity is a use subject to a coastal permit.

c. Should it be found that a particular activity exempted by Subparagraph a, above, may have a direct and significant impact on coastal waters, the department may conduct such investigation as may be appropriate to ascertain the facts and may require the persons conducting such activity to provide appropriate factual information regarding the activity so that a determination may be made as to whether the activity is a use subject to a permit.

d. The secretary shall determine whether a coastal use permit is required for a particular activity. A coastal use permit will be required only for those elements of the activity which have direct and significant impacts on coastal waters.

e. The exemption described in this Section shall not refer to activities occurring on cheniers, salt domes, barrier islands, beaches, and similar isolated, raised land forms in the coastal zone. It does refer to natural ridges and levees.

3. Emergency Uses

a. Coastal use permits are not required in advance for conducting uses necessary to correct emergency situations.

i. Emergency situations are those brought about by natural or man-made causes, such as storms, floods, fires, wrecks, explosions, spills, which would result in hazard to life, loss of property, or damage to the environment if

immediate corrective action were not taken.

ii. This exemption applies only to those corrective actions which are immediately required for the protection of lives, property, or the environment necessitated by the emergency situation.

b. Prior to undertaking such emergency uses, or as soon as possible thereafter, the person carrying out the use shall notify the secretary and the local government, if the use is conducted in a parish with an approved local program, and give a brief description of the emergency use and the necessity for carrying it out without a coastal use permit.

c. As soon as possible after the emergency situation arises, any person who has conducted an emergency use shall report on the emergency use to the approved local program or to the administrator. A determination shall be made as to whether the emergency use will continue to have direct and significant impacts on coastal waters. If so, the user shall apply for an after-the-fact permit. The removal of any structure or works occasioned by the emergency and the restoration of the condition existing prior to the emergency use may be ordered if the permit is denied in whole or in part.

4. Normal Maintenance and Repair

a. Normal repairs and the rehabilitation, replacement, or maintenance of existing structures shall not require a coastal use permit provided that:

i. the structure or work was lawfully in existence, currently serviceable, and in active use during the year preceding the repair, replacement or maintenance; and,

ii. the repair or maintenance does not result in an encroachment into a wetland area greater than that of the previous structure or work; and,

iii. the repair or maintenance does not involve dredge or fill activities; and

iv. the repair or maintenance does not result in a structure or facility that is significantly different in magnitude or function from the original.

b. This exemption shall not apply to the repair or maintenance of any structure or facility built or maintained in violation of the coastal management program.

c. Coastal use permits will normally authorize periodic maintenance including maintenance dredging. All maintenance activities authorized by coastal use permits shall be conducted pursuant to the conditions established for that permit. Where maintenance is performed which is not described in an applicable coastal use permit, it shall conform to this Section.

5. Construction of a Residence or Camp

a. The construction of a residence or a camp shall not require a coastal use permit provided that:

i. The terms shall refer solely to structures used for noncommercial and nonprofit purposes and which are commonly referred to as "single family" and not multiple family dwellings.

ii. The terms shall refer solely to the construction of one such structure by or for the owner of the land for the owner's use and not to practices involving the building of more than one such structure as in subdividing, tract development, speculative building, or recreational community development.

b. The exemption shall apply only to the construction of the structure and appurtenances such as septic fields, outbuildings, walk-ways, gazebos, small wharves, landings, boathouses, private driveways, and similar works, but not to any bulkheading or any dredging or filling activity except for small amounts of fill necessary for the structure itself and for the installation and maintenance of septic or sewerage facilities.

6. Navigational Aids

a. The construction and modification of navigational aids shall not require a coastal use permit.

b. The term shall include channel markers, buoys, marker piles, dolphins, piling, pile clusters, etc.; provided that the exemption does not apply to associated dredge or fill uses or the construction of mooring structures, advertising signs, platforms, or similar structures associated with such facilities. All navigational aids constructed pursuant to this section shall conform to United State Coast Guard standards and requirements.

7. Agricultural, Forestry and Aquacultural Activities

a. Agricultural, forestry and aquacultural activities on lands consistently used in the past for such activities shall not require a coastal use permit provided that:

i. The activity is located on lands or in waters which have been used on an ongoing basis for such purposes, consistent with normal practices, prior to the effective date of SLCRMA (Act 361 of 1978).

ii. The activity does not require a permit from the U.S. Army Corps of Engineers and meets federal requirements for such exempted activities; and

iii. The activity is not intended to, nor will it result in, changing the agricultural, forestry, or aquacultural use for which the land has been consistently used for in the past to another use.

b. The exemption includes but is not limited to normal agricultural, forestry, and aquacultural activities such as plowing; seeding; grazing; cultivating; insect control; fence building and repair; thinning; harvesting for the production of food, fiber and forest products; maintenance and drainage of existing farm, stock, or fish ponds; digging of small drainage ditches; or maintenance of existing drainage ditches and farm or forest roads carried out in accordance with good management practices.

8. Blanket Exemption. No use or activity shall require a coastal use permit if:

a. The use or activity was lawfully commenced or established prior to the implementation of the coastal use permit process;

b. The secretary determines that it does not have a direct or significant impact on coastal waters; or

c. The secretary determines one is not required pursuant to §723.G of these rules.

C. Permit Application, Issuance, and Denial

1. General Requirements

a. Any applicant for a coastal use permit shall file a complete application with the State, or at his option, in areas subject to an approved local coastal management program, with the local government. The department will provide the application forms and instructions, including example plats and interpretive assistance, to any interested party. The staffs of the coastal management section and approved local programs shall be available for consultation prior to submission of an application and such consultation is strongly recommended. Application forms may be periodically revised to obtain all information necessary for review of the proposed project.

b. Separate applications shall be made for unrelated projects or projects involving noncontiguous parcels of property. Joint applications may be made in cases of related construction involving contiguous parcels of property.

c. Applicants for coastal use permits for uses of state concern shall include with their application filed with the State a certification that a copy of the application was forwarded by certified mail or hand delivered to the affected local parish(es) with an approved coastal management program.

d. Applicants for coastal use permits for uses of state concern, who elect to submit their application to the affected local parish(es) with an approved local coastal management program, shall include with their application a certification that a copy of the application was forwarded by certified mail or hand delivered to the State.

2. Content of Application. The application submitted shall contain the same information required for a permit from the U.S. Army Corps of Engineers and such additional information as the secretary determines to be reasonably necessary for proper evaluation of an application.

3. Fee Schedule

a. The following schedule of fees will be charged for the processing and evaluation of coastal use permit applications of state concern.

i. A nonrefundable application fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be $20 for each application and $20 for each request for determination.

ii. In addition to the nonrefundable application fee, the following fees will be assessed according to total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredge or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of $0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of $2,000.

b. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

c. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subsection D.1.a of this Section.

d. Individual applications authorized under any existing or future CMD CUP general permits will be assessed only the application fee unless the secretary determines that full individual permit processing is in the public interest. If it is determined that a general CMD permit application requires full CUP processing, both the application and permit fee will be assessed.

e. Nothing contained in Paragraph 3.a-e shall affect the right of local government and parishes with approved programs to assess fees for processing and evaluating coastal use permit applications.

f. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

4. Processing the Application

a. When an apparently complete application for a permit is received, the permitting body shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it.

b. Application processing will begin when an application that is apparently complete is accepted by the permitting body.

c. Within two working days of receipt of an apparently complete application by a local government with an approved program, a copy of the application and all attachments and the local government's decision as to whether the use is one of state or local concern shall be sent to the secretary.

d. Public notice as described in Paragraph 5 below, will be issued within 10 days of receipt of an apparently complete application by the secretary.

e. The permitting body shall evaluate the proposed application pursuant to Paragraph 6 below, to determine the need for a public hearing.

f. The permitting body, pursuant to Paragraph 8 below, shall either send a draft permit to the applicant for acceptance and signature or send notice of denial to the applicant within 30 days of the giving of public notice or within 15 days after the closing of the record of a public hearing, if held, whichever is later.

g. Public notice of permit decisions shall be given pursuant to Paragraph 5.a.ii below.

5. Public Notice and Consideration of Public Comment

a. Public notice of the receipt of all apparently complete applications for coastal use permits shall be given by:

i. mailing a brief description of the application along with a statement indicating where a copy of the application may be inspected to any person who has filed a request to be notified of such permit applications and to all affected governmental bodies;

ii. by posting or causing to be posted a copy of the application at the location of the proposed use;

iii. by sending notice of the application to all appropriate news media in the parish or parishes in which the use would be located; and

iv. by causing the publication of notice of the application once in the official journal of the state; or for uses of local concern in parishes with approved local programs, by causing the publication of notice of the application once in the official journal of the parish.

b. Notice shall be considered given upon publication in the official journal.

c. The notice shall set forth that any comments on the proposed development shall be submitted to the permitting body within 25 days from the date of official journal publication of the notice.

d. A copy of the application will be sent to any person requesting it upon payment of a reasonable fee to cover costs of copying, handling, and mailing, except that information of a confidential or proprietary nature shall be withheld. In the event that attachments to the application are not readily reproducible, they shall be available for inspection at the permitting office.

e. The permitting body shall consider comments received in response to the public notice in its subsequent actions on the permit application. Comments received will be made a part of the official file on the application. If comments received relate to matters within the special expertise of another governmental body, the permitting body may seek advice of that agency. If necessary, the applicant will be given the opportunity to furnish his proposed resolution or rebuttal to all objections from government agencies and other substantive adverse comments before a final decision is made on the application.

f. The secretary shall issue monthly a list of permits issued or denied during the previous month. This list will be distributed to all persons who receive the public notices.

6. Public Hearings on Permit Applications

a. A public hearing may be held in connection with the consideration of an application for a new permit and when it is proposed that an existing permit be modified or revoked.

b. Any person may request in writing within the comment period specified in the public notice that a public hearing be held to consider material matters at issue in a permit application. Upon receipt of any such request, the permitting body shall determine whether the issues raised are substantial, and there is a valid public interest to be served by holding a public hearing.

c. Public hearing(s) are appropriate when there is significant public opposition to a proposed use, or there have been requests from legislators or from local governments or other local authorities, or in controversial cases involving significant economic, social, or environmental issues. The secretary or local government with an approved program has the discretion to require hearings in any particular case.

d. If the determination is made to hold a public hearing, the permitting body shall promptly notify the applicant, set a time and place for the hearing, and give public notice.

e. If a request for a public hearing has been received, and the decision is made that no hearing will be held, public notice of the decision shall be given.

7. Additional Information

a. If an application is found to be incomplete or inaccurate after processing has begun or if it is determined

that additional information from the applicant is necessary to assess the application adequately, processing will be stopped pending receipt of the necessary changes or information from the applicant and the processing periods provided for in Paragraph 4.d and f will be interrupted. Upon receipt of the required changes or information, a new processing period will begin.

b. If the applicant fails to respond within 30 days to any request or inquiry of the permitting body, the permitting body may advise the applicant that his application will be considered as having been withdrawn unless and until the applicant responds within 15 days of the date of the letter.

8. Decisions on Permits

a. The permitting body will determine whether or not the permit should be issued. Permits shall be issued only for those uses which are consistent with the guidelines, the state program, and affected approved local programs. The secretary shall not consider the use to be consistent with the state program unless the permit includes condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the use. Permit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors. The permitting body shall prepare a short and clear statement explaining the basis for its decision on all applications. This statement shall include the permitting body's conclusions on the conformity of the proposed use with the guidelines, the state program and approved local programs. The statement shall be dated, signed, and included in the record prior to final action on the application.

b. If the staff of the permitting body recommends issuance of the permit, the permitting body will forward two copies of the proposed permit to the applicant. A letter of transmittal to the applicant shall include the recommendations to the secretary and the anticipated date on which the application shall be presented to him for action. Unless good cause is then presented in support of changes to the permit and the conditions therein, the permit will be presented to the secretary for action in such form.

c. Final action on the permit application is the signature of the issuing official on the permit or the mailing of the letter notifying the applicant of the denial.

9. Conditions of Permit

a. By accepting the permit, the applicant agrees to:

i. carry out or perform the use in accordance with the plans and specifications approved by the permitting body;

ii. comply with any permit conditions imposed by the permitting body;

iii. adjust, alter, or remove any structure or other physical evidence of the permitted use if, in the opinion of the permitting body, it proves to be beyond the scope of the use as approved or is abandoned;

iv. provide, if required by the permitting body, an acceptable surety bond in an appropriate amount to ensure adjustment, alteration, or removal should the permitting body determine it necessary;

v. hold and save the State of Louisiana, the local government, the department, and their officers and employees harmless from any damage to persons or property which might result from the work, activity, or structure permitted;

vi. certify that any permitted construction has been completed in an acceptable and satisfactory manner and in accordance with the plans and specifications approved by the permitting body. The permitting body may, when appropriate, require such certification be given by a registered professional engineer.

b. The permitting body shall place such other conditions on the permit as are appropriate to ensure compliance with the coastal management program.

c. Permitted uses subject to this Part shall be of two types, continuing and noncontinuing uses, which are defined below as follows.

i. Continuing uses are activities which by nature are carried out on an uninterrupted basis, examples include shell dredging and surface mining activities, projects involving maintenance dredging of existing waterways, and maintenance and repair of existing levees.

ii. Noncontinuing uses are activities which by nature are done on a one-time basis, examples include dredging access canals for oil and gas well drilling, implementing an approved land use alteration plan, and constructing new port or marina facilities.

d. The term of issuance of permits shall be as follows.

i. The term to initiate a coastal use permit for a noncontinuing use shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance. The permit term for initiation may be extended pursuant to Subsection D for an additional two years. The permit term for completion may not be extended.

ii. The term of a coastal use permit for a continuing use shall be five years from the date of issuance. The permit term may not be extended.

D. Modification, Suspension or Revocation of Permits

1. Modifications

a. The terms and conditions of a permit may be modified to allow changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Changes which would significantly increase the impacts of a permitted activity shall be processed as new applications for permits pursuant to Subsection C, not as a modification.

b. A permit may be modified upon request of the permittee:

i. if mutual agreement can be reached on a modification, written notice of the modification will be given to the permittee;

ii. if mutual agreement cannot be reached, a permittee's request for a modification shall be considered denied.

2. Suspensions

a. The permitting body may suspend a permit upon a finding that:

i. the permittee has failed or refuses to comply with the terms and conditions of the permit or any modifications thereof, or

ii. the permittee has submitted false or incomplete information in his application or otherwise, or

iii. the permittee has failed or refused to comply with any lawful order or request of the permitting body or the secretary.

b. The permitting body shall notify the permittee in writing that the permit has been suspended and the reasons therefor and order the permittee to cease immediately all previously authorized activities. The notice shall also advise the permittee that he will be given, upon request made within 10 days of receipt of the notice, an opportunity to respond to the reasons given for the suspension.

c. After consideration of the permittee's response, or, if none, within 30 days after issuance of the notice, the permitting body shall take action to reinstate, modify or revoke the permit and shall notify the permittee of the action taken.

3. Revocation. If, after compliance with the suspension procedures in Subsection B, above, the permitting body determines that revocation or modification of the permit is warranted, written notice of the revocation or modification shall be given to the permittee.

4. Enforcement. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by §214.36 of the SLCRMA.

5. Extension

a. The secretary shall review extension requests subject to this part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

b. If the secretary determines that extension may be considered, the Coastal Management Division shall cause to be issued for public comment, for a period of 25 days, a copy of the original permit with its associated drawings in accordance with Subparagraph h below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

c. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

d. The permit terms of noncontinuing uses may be extended once for an additional two years, except that an extension may be granted only for the term to initiate work and not for the term to complete work as described in Subsection C.9.c.i above.

e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. An extension request fee in the amount of $80 must be included with such a request, and the request must be received by the Coastal Management Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall not be eligible for consideration for extension.

g. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

h. The Coastal Management Division shall issue notice of the extension request to all members of the Joint Public Notice mailing list, and shall publish notice that the extension request has been granted or denied in the Bi-weekly Status Report that is published in the state journal as well as mailed to Joint Public Notice mailing recipients.

E. General Permits

1. General

a. The administrator may, after compliance with the procedures set forth in Subsection C.4 and 5, issue general permits for certain clearly described categories of uses requiring coastal use permits. After a general permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-cases basis, that the public interest requires full review.

b. General permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

c. When an individual use is authorized under a general permit, the authorization shall include condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the individual use.

d. In addition to the fees identified at §723.C.3.a, any person seeking authorization under a general permit shall be charged a compensatory mitigation processing fee, if applicable, pursuant to §724.D.

2. Reporting

a. Each person desiring to commence work on a use subject to a general permit must give notice to the secretary and receive written authorization prior to commencing work. Such authorization shall be issued within 30 days of receipt of the notice.

b. Such notice shall include:

i. the name and address of the person conducting the use,

ii. such descriptive material, maps, and plans as may be required by the secretary for that general permit.

3. Conditions of General Permits

a. The secretary shall prescribe such conditions for each general permit as may be appropriate.

b. A general permit may be revoked if the secretary determines that such revocation is in the public interest and consistent with the coastal management program.

4. Local General Permits. A local government with an approved local program may issue general permits for uses of local concern under its jurisdiction pursuant to the above procedures. Such general permits shall be subject to approval by the secretary.

F. Determinations as to Whether Uses are of State Concern or Local Concern

1. Filing of Applications with a Local Government with an Approved Local Coastal Program

a. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. This determination shall be based on the criteria set forth in Paragraph 3 below.

b. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the secretary within two working days of receipt of the apparently complete application, pursuant to Subsection C.4.d.

c. The secretary shall review the decision and rationale and shall let it stand or reverse it. If the secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal shall be sent to the local government within two working days of receipt of the application from the local government.

d. The appropriate permitting body for the use, as determined by the secretary, shall thereafter be responsible for the permit review process.

2. Filing of Application with the Secretary. Within two working days of the filing of an apparently complete application with the secretary, the secretary shall make a determination as to whether the use is one of state concern or local concern based on the criteria set forth in Paragraph 3 below. Notice shall be given to affected local programs of the determination whether the use is a use of state or local concern. The secretary shall give full consideration to local program comments or objections to any such determination in making future determinations.

3. Criteria for Determination

a. The following factors shall be used in making a determination as to whether a use is of state or local concern:

i. the specific terms of the uses as classified in the act;

ii. the relationship of a proposed use to a particular use classified in the act;

iii. if a use is not predominately classified as either state or local by the act or the use overlaps the two classifications, it shall be of local concern unless it:

(a). is being carried out with state or federal funds;

(b). involves the use of or has significant impacts on state or federal lands, water bottoms, or works;

(c). is mineral or energy development, production or transportation related;

(d). involves the use of, or has significant impacts, on barrier islands or beaches or any other shoreline which forms part of the baseline for Louisiana's offshore jurisdiction;

(e). will result in major changes in the quantity or

quality of water flow and circulation or in salinity or sediment transport regimes; or

(f). has significant interparish or interstate impacts.

b. For purposes of this Paragraph, the term "state" shall mean the state of Louisiana, its agencies, and political subdivisions; but not local governments, their agencies and political subdivisions.

G. Determination as to Whether a Coastal Use Permit Is Required

1. Request by Applicant

a. Any person who proposes to conduct an activity may submit a request in writing to the secretary for a formal finding as to whether the proposed activity is a use of state or local concern within the coastal zone subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the secretary as may be appropriate.

b. The requesting party must set forth sufficient facts to support a finding that the proposed activity either:

i. is exempt from coastal use permitting; or

ii. does not have a direct and significant impact on coastal waters; or

iii. is outside the coastal zone boundary.

c. Within 30 days of receipt of the request and the complete application, the requestor shall be sent notice of the decision on the request and public notice of the decision shall be given.

2. Finding Without Request

a. In reviewing a permit application for which no request has been submitted, the secretary may find after full consideration of the application, likely impacts of the proposed use, comments received, and applicable rules, regulations and guidelines, that a coastal use permit is not required. If he finds that no permit is required, the secretary shall notify the applicant and give public notice.

b. A local government with an approved program may request that the secretary review an application for a use of local concern and make a determination as to whether a coastal use permit is required, pursuant to the procedures provided for in Paragraph 2.a above. The secretary shall notify the local government of his decision.

3. Decisions

a. Only the secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting by Subsection C of these rules or by §214.31 (B) or (C), §214.32 (A) or §214.34 of the SLCRMA.

b. The notice sent to the requestor or applicant shall include a short and plain statement of the basis for the decision. Public notice of the decision shall be given pursuant to Subsection C.5.f of these rules.

4. Actions After Decision

a. If the determination is that a coastal use permit is required, processing of the application may be commenced or continued pursuant to Subsection C of these rules.

b. If the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity. Provided that the secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented is significantly different from that shown on the request or application, does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation, or failure to comply with any cease and desist or other lawful order of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Office of the Secretary, LR 21:835 (August 1995).

**§724. Rules and Procedures for Mitigation**

A. General. This Section provides general procedures for avoiding and minimizing adverse impacts identified in the permit review process, restoring impacted sites when appropriate, quantifying anticipated unavoidable wetland ecological value losses, requiring appropriate and sufficient compensatory mitigation, establishing mitigation banks, establishing advanced mitigation projects, and evaluating and processing requests for variances from the compensatory mitigation requirement.

B. Avoidance, Minimization, and Restoration of, and Compensation for, Potential Wetland Ecological Value Losses

1. The secretary shall not grant a coastal use permit or issue a general permit authorization for an individual activity unless the permit/authorization is conditioned to include:

a. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to avoid and minimize those adverse impacts identified during the permit review process; and

b. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to restore impacted sites when appropriate; and

c. a requirement for compensatory mitigation to offset any net loss of wetland ecological value that is

anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts (i.e., unavoidable net loss of wetland ecological value), unless a variance is granted pursuant to §724.K.

2. If the secretary determines that a proposed activity would comply with §§701-719 and would not result in a net loss of wetland ecological values, the secretary shall not require compensatory mitigation.

3. When a proposed oil and gas exploration site would impact vegetated wetlands, the determination regarding the avoidance and minimization of adverse impacts and impact site restoration for the proposed exploration activity and its associated production and transmission activities shall be made through the geological review procedure.

4. In addition to the requirement contained in §724.B.3, the secretary may utilize the geologic review procedure, when requested by the Louisiana Department of Wildlife and Fisheries (LDWF), to render the determination regarding avoidance and minimization of adverse impacts and impact restoration, for proposed oil and gas exploration activities and its associated production and transmission activities which would:

a. occur within one-quarter mile of an oyster seed ground, oyster seed reservation, or a public oyster harvesting area;

b. impact other oyster or other shell reef(s);

c. occur within the boundaries of a wildlife refuge or wildlife management area owned or managed by LDWF; or

d. occur within an area designated as a natural and scenic river in accordance with the provisions of R.S. 56:1840 et seq.

C. Quantification of Anticipated Net Gains and Unavoidable Net Losses of Ecological Value

1. When compensatory mitigation would be accomplished via the use of the Fina-Laterre Mitigation Bank or the Nature Conservancy's Pine Flatwood Mitigation Bank, net gains and unavoidable net losses of ecological value shall be quantified in accordance with the valuation and accounting procedures described in the respective memoranda of agreement.

2. Except as allowed in §724.C.1 and §724.H.3, anticipated net gains and unavoidable net losses of ecological value shall be quantified as cumulative habitat units (CHUs) or average annual habitat units (AAHUs), whichever is most appropriate for the given situation.

3. If CHUs are determined to be appropriate:

a. Net gain or net loss of ecological value = (sum of CHUs produced in a future-with-project scenario) - (sum of CHUs produced in a future-without-project scenario).

b. CHUs for each time interval within the project years shall be calculated by the following formula and in general accordance with the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure: $CHUs = (T_2 - T_1) \times \{[(A_1 \times HSI_1 + A_2 \times HSI_2) / 3] + [(A_2 \times HSI_1 + A_1 \times HSI_2) / 6]\}$, where $T_1$ = first year of time interval, $T_2$ = last year of time interval, $A_1$ = wetland acres at beginning of time interval, $A_2$ = wetland acres at end of time interval, $HSI_1$ = habitat suitability index at beginning of time interval, and $HSI_2$ = habitat suitability index at end of time interval.

4. If AAHUs are determined to be appropriate:

a. Net gain or net loss of ecological value = (AAHUs produced in a future-with-project scenario) - (AAHUs produced in a future-without-project scenario).

b. AAHUs = (sum of CHUs for a given scenario) / (project years).

5. The quantification of "wetland acres," at selected times throughout the project years, shall be based on the following factors:

a. the vegetated wetland acreage depicted, in the accepted permit application, as being directly impacted by the proposed activity;

b. when determined to be appropriate by the secretary, vegetated wetland acreage of secondary impact; see definition of secondary impact in §700; and

c. the vegetated wetland acreage that would have been present at the activity site, at selected times throughout the project years, without implementation of the proposed activity, based on the best available, as determined by the secretary, vegetated wetland loss or gain data.

6. If (1) the vegetated wetland acreage to be altered by the proposed activity is limited to the area depicted in the accepted permit application and (2) the only anticipated variation in that acreage would be due to vegetated wetland loss or gain, an "adjusted acreage" can be calculated with the following formula and utilized in lieu of calculating acreage at selected times throughout project years: Adjusted acres = {acres of direct impact - [acres of direct impact × annual land loss rate × (project years / 2)]}.

7. The secretary shall provide upon request, to any interested party, the source and resultant vegetated wetland loss or gain data which would be applied to a specific proposed activity.

8. "Habitat suitability indices" (HSI) shall be determined by applying:

a. for marsh habitats, the May 2, 1994, version of the Wetland Value Assessment Methodology Models, developed by the Coastal Wetland Planning, Protection, and Restoration Act (P.L. 101-646) Environmental Work Group; or

b. for bottomland hardwoods and fresh swamp, the January 10, 1994, version of "Habitat Assessment Models for Fresh Swamp and Bottomland Hardwoods Within the Louisiana Coastal Zone."

9. The secretary may adopt modifications to those models, provided that the resultant "habitat suitability index" values do not vary more than 15 percent from the above referenced versions. Modifications which cause greater than 15 percent variation in "habitat suitability index" values or adoption of alternative models or methodology may be undertaken only in accordance with provisions of R.S. 49:953. The amount of variation shall be determined by comparing the results of the models referenced above with the results of the modified models on a minimum of 10 sites for the appropriate habitat type(s).

D. Compensatory Mitigation Processing Fees

1. In addition to the fees identified at §723.C.3.a.i-ii, when the secretary determines that compensatory mitigation would be required pursuant to §724.B, a fee shall be charged for the evaluation, processing, and determination of compensatory mitigation requirements. The fee shall apply regardless of which compensatory mitigation option is selected and shall be in addition to any cost incurred to implement the required compensatory mitigation. The requested permit or general permit authorization for an individual activity shall not be issued until the secretary has received the compensatory mitigation processing fee. This fee shall be determined as follows:

a. Noncommercial activities which directly impact 1.00 acre or less of vegetated wetlands shall be assessed a compensatory mitigation processing fee of $50.

b. All other activities shall be assessed a compensatory mitigation processing fee according the following table:

| Vegetated Wetland Acres Depicted as Directly Altered in Accepted Permit Application | Compensatory Mitigation Processing Fee |
|---|---|
| 0 - 0.50 | $150 |
| 0.51 - 1.00 | $300 |
| 1.01 - 2.00 | $600 |
| 2.01 - 3.00 | $900 |
| 3.01 - 4.00 | $1,200 |
| 4.01 - 5.00 | $1,500 |
| 5.01 - 10.00 | $2,250 |
| 10.01 - 15.00 | $3,750 |
| 15.01 - 25.00 | $6,000 |
| 25.01 - 100.00 | $12,500 |
| > 100.00 | $15,000 |

2. Unless waived or reduced by the secretary, the compensatory mitigation processing fee shall apply even if the secretary grants a full variance to the compensatory mitigation requirement pursuant to §724.K.

E. Compensatory Mitigation Options

1. Compensatory mitigation shall be accomplished through one or more of the following compensatory mitigation options as approved by the secretary:

a. use or acquisition of an appropriate type and quantity of mitigation credits from a mitigation bank approved by the secretary, pursuant to §724.F;

b. use or acquisition of an appropriate type and quantity of advanced mitigation credits from an advanced mitigation project approved by the secretary, pursuant to §724.G;

c. implementation of an individual mitigation measure or measures to offset the unavoidable ecological value losses associated with the permitted activity, pursuant to §724.H;

d. monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund, pursuant to §724.I; and

e. "other" compensatory mitigation options determined to be appropriate by the secretary.

F. Mitigation Banks

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to establish wetland mitigation banks.

2. In determining the acceptability and appropriateness of establishing a mitigation bank, the secretary shall consider the following factors:

a. the potential mitigation bank operator's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the mitigation bank operator's potential ability to operate and maintain the mitigation bank throughout the life of the bank (i.e., 20 years for marsh mitigation banks or 50 years for forested wetland mitigation banks);

c. the mitigation bank's potential to create, restore, protect, and/or enhance vegetated wetlands;

d. the mitigation bank's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the mitigation bank's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the bank; and

f. whether the proposed project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, or enhance vegetated wetlands.

3. In addition to the fees identified at §723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, habitat evaluation, establishment, and periodic review of mitigation banks according to the following table:

| Proposed Mitigation Bank Acreage | Informal Review | Initial Evaluation Fee | Habitat Evaluation Fee | Establishment Fee | Periodic Review Fee |
|---|---|---|---|---|---|
| 0 - 100 | $0 | $75 | $350 | $75 | $50 |
| 101 - 500 | $0 | $150 | $700 | $150 | $100 |
| 501 - 1,000 | $0 | $225 | $1,050 | $225 | $200 |
| 1,001 - 5,000 | $0 | $300 | $1,400 | $300 | $300 |
| > 5,000 | $0 | $375 | $1,750 | $375 | $400 |

4. Proposals for the establishment of mitigation banks utilizing projects which have been permitted but not fully implemented or projects which would not require a permit shall be considered as follows:

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a written request for the secretary to consider designation of a mitigation bank; the following must be provided with the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is already on file with the department;

iii. a statement describing the extent to which the

project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review the request and within 20 days:

i. inform the potential operator of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential operator, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 90 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as a mitigation bank and:

i. if the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as a mitigation bank.

f. If a permit modification is necessary and is requested by the permittee in accordance with §723.D, the secretary shall process the request for modification in accordance with §723.D.

g. If and when the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

h. Within 90 days of receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

i. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

j. The secretary shall render a final determination as to whether the project would be acceptable as a mitigation bank. If the project is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a memorandum of agreement (MOA) which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

5. Proposals for the establishment of mitigation banks utilizing projects which would require a permit shall be considered as follows:

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a standard permit application in accordance with §723.C. The following must be provided with the permit application:

i. a statement indicating the applicant's interest in establishing a mitigation bank;

ii. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

iii. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review and process the permit application in accordance with §723.C, with added consideration that the project is proposed as a mitigation bank.

d. During the public notice period, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s), received in writing during the public notice period, or received in writing within 20 days of any such meeting(s).

e. The secretary shall render a preliminary determination as to whether the proposed activity would be acceptable as a mitigation bank, and:

i. if the proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the proposed activity preliminarily acceptable as a mitigation bank.

f. If and when a proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

g. Following receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

h. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

i. The secretary shall render a final determination as to whether the proposed activity would be acceptable as a mitigation bank. If the proposed activity is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a MOA which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

6. The secretary shall determine the quantity, by habitat type, of mitigation credits potentially available for donation, sale, trade, or use from a proposed mitigation bank as follows:

a. Following receipt of the mitigation bank habitat evaluation fee (§724.F.3), the secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator to participate in the determination of potential mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting held to determine the type and quantity of potentially available mitigation credits.

b. The total quantity of potential mitigation credits (AAHUs or CHUs), by habitat type, attributable to the proposed mitigation bank shall be predicted by applying the methodology described in §724.C. The secretary shall consult with the state advisory agencies, the Corps, and federal advisory agencies to ensure that data gathering techniques of sufficient quality and intensity to allow replication of habitat response assessments throughout the mitigation bank life are employed.

c. For projects which have been partially implemented prior to designation as a mitigation bank, total potential mitigation bank credits would be limited to those attributed to features implemented after designation as a bank, except that if agreed to in advance by the secretary total potential credits could include those attributed to features implemented between the time of the mitigation request being accepted by the secretary and bank designation. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of total potential mitigation credits.

d. Mitigation credits which are donated, sold, traded, or otherwise used for compensatory mitigation shall be referred to as debited credits.

7. Mechanisms for Ensuring Remediation, Operation, and Maintenance of Mitigation Bank Features

a. Three options are available to meet the requirements of §724.F.4.i and §724.F.5.h:

i. for any mitigation bank, mitigation credits could be made available to the mitigation bank operator incrementally over the life of the bank based on periodic reviews of habitat response pursuant to §724.F.10; or

ii. for banks which include features which do not typically require operation or maintenance and involve the types of mitigation measures which have produced consistent and demonstrated success, 100 percent of available credits would be made available to the mitigation bank operator when the bank becomes operational, provided that:

(a). the operator has established a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank; and

(b). the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for a period of five years, for remediation of the mitigation bank features; or

iii. for banks which include features which typically require remediation, operation, or maintenance (such as water control structures, plugs, channel improvement works, shore or bank protection structures, etc.) or involve the types of mitigation measures which lack consistent and demonstrated success, 25 percent of available credits would be made available, when the bank becomes operational, to the mitigation bank operator for the first two years of operation provided that (1) the operator establishes a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank, (2) the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for the life of the bank, for remediation (as may be needed for expectable and catastrophic events), operation, and maintenance of the mitigation bank, and (3) the operator provides for the life of the bank, in case the operator fails to remediate, operate, or maintain the mitigation bank in accordance with the MOA, legal authority for the department to perform the warranted remediation, operation, or maintenance; the remaining 75 percent of the credits would be made available in the third year provided that a review of habitat response (§724.F.9) indicates initial success of the mitigation features.

b. The conservation servitude shall be established in accordance with R.S. 9:1271 et seq. and shall:

i. cover all the property located within the mitigation bank;

ii. if appropriate, contain specific language regarding the extent of allowable timber harvesting;

iii. if appropriate, contain specific language regarding the extent of other allowable activities;

iv. prohibit all other activities which may reduce the ecological value of the site;

v. specify the term to be 20 years or more for marsh habitats and 50 years or more for forested habitats;

vi. designate the department as the holder of the servitude;

vii. convey a "third party right of enforcement" to any interested MOA signatory or other party as may be mutually agreed to by the secretary and the mitigation bank operator; and

viii. be recorded in the property records of the parish in which the property is located.

c. The financial mechanism established by the mitigation bank operator could be a letter of credit, surety bond, escrow account, or other mechanism; to be acceptable to the secretary the financial mechanism shall:

i. for mitigation banks described in §724.F.7.a.ii, ensure payment of the designated amount for remediation of the mitigation measures for a period of five years;

ii. for mitigation banks described in §724.F.7.a.iii, ensure payment of the designated amount for remediation, operation, or maintenance of the mitigation measures for a period equal to the life of the mitigation bank; and

iii. ensure that such payments would be made to the Louisiana Wetlands Conservation and Restoration Fund in the event that the mitigation bank operator fails to perform the remediation, operation, or maintenance specified in the MOA.

d. If a letter of credit or escrow account is utilized, the letter or account should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act.

e. If a surety bond is utilized, the bond shall be written by a surety or insurance company which, at the time of MOA execution, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus.

8. The formal MOA to be developed between the secretary and the mitigation bank operator shall, at a minimum:

a. provide a statement of purpose;

b. define the physical boundaries of the mitigation bank;

c. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

d. specify that the period of operation and maintenance of the mitigation bank is 20 years or more for marsh habitats and 50 years or more for forested habitats;

e. describe the mechanism(s), which meets or which will meet the requirements of §724.F.7;

f. identify the habitat assessment methodology utilized to establish the quantity of mitigation to be credited, including an explanation of any calculations necessary to account for a project life which may, at the option of the mitigation bank operator, be greater than 20 years for marsh projects or greater than 50 years for forested wetland projects;

g. identify, by habitat type, the quantity of total credits;

h. identify the schedule for credits becoming available;

i. identify the schedule for reviewing habitat response over the life of the bank;

j. specifically identify the bank operator responsibilities regarding monitoring and/or providing information necessary for habitat response reviews;

k. for mitigation banks described at §724.F.7.a.iii, specifically define the remedial actions for situations where the bank operator fails to perform the necessary remediation, operation, or maintenance, including securing payments pursuant to §724.F.7 and ensuring legal authority for the department to perform necessary remediation, operation, or maintenance; and

l. for mitigation banks described at §724.F.7.a.iii, specifically define the course of action where habitat response is greater than or is less than predicted.

9. The secretary shall review the habitat response of mitigation banks as follows:

a. The mitigation bank operator shall submit the periodic review fee identified at §724.F.3 to the department within 60 days of being requested to do so by the secretary.

b. Failure to submit such payment shall result in suspension of the mitigation bank until such time that the fee is submitted; if the fee is not submitted within 120 days of the secretary's request, the mitigation bank shall be terminated and the secretary shall require the mitigation bank operator to provide compensatory mitigation to offset the ecological value credits which were debited but not actually produced by the time of termination.

c. State advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator shall be invited to participate in each habitat response review; the secretary shall

consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting related to these reviews.

d. For all banks, a review shall be conducted prior to the end of the second full year of the bank being considered operational, but at least 20 months after commencement of operation; the purpose of this review is to determine if any remediation or adjustments to the prescribed operation or maintenance is necessary.

e. For those banks described at §724.F.7.a.iii, if the review conducted prior to the end of the second full year of operation indicates that the mitigation measures are functioning as projected, the remaining 75 percent of the mitigation credits shall be made available to the mitigation bank operator; if that review indicates that the mitigation measures are not functioning as projected, no additional mitigation credits shall be made available to the mitigation bank operator until such time that a recalculation of projected credits is made and/or it is demonstrated that the mitigation measures are functioning as predicted.

f. In addition to the review conducted prior to the end of the second full year of operation, a review of all marsh mitigation banks shall be conducted within four months prior to the completion of the fifth, tenth, fifteenth, and twentieth years, and a review of all forested wetland mitigation banks shall be conducted prior to the completion of the fifth, tenth, twentieth, thirtieth, fortieth, and fiftieth years. The purposes of these reviews are to determine if remediation is needed, to determine the possible benefit of revising project features and/ or their operation or maintenance, to determine if the mitigation bank operator has operated and maintained the mitigation measures as agreed to in the MOA, and to determine if the habitat has responded as predicted.

10. If the secretary and mitigation bank operator agree, pursuant to §724.F.7.a, to ensure appropriate remediation, operation, and maintenance of mitigation bank features via the incremental availability of mitigation credits during the life of the bank, the following procedures shall be followed:

a. Twenty-five percent of the total credits for mitigation banks (marsh and forested wetland banks) shall be made available to the mitigation bank operator upon full implementation of the wetland mitigation measures described in a signed MOA; or if a signed MOA calls for phased implementation of the mitigation measures, an appropriate percentage, not to exceed 25 percent shall be made available to the mitigation bank operator upon implementation of the initial phase(s); these credits shall be referred to as available credits.

b. If at any time, the mitigation bank can not be operated and maintained as described in the MOA due to force majeure, the mitigation bank operator shall have the option of rectifying the wetland creation, restoration, protection, and enhancement measures.

i. If the mitigation bank operator chooses to rectify those measures, the secretary shall recalculate the number of total credits, if it is anticipated that such a recalculation would yield a result substantially different from the current projection of total credits.

(a). The amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table:

| Year of Recalculation | Available Credit |
|---|---|
| 1 - 5 | Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 6 - 10 | Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 11 - 15 | Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 16 - 20 | Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater. |

(b). The amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table:

| Year of Recalculation | Available Credit |
|---|---|
| 1 - 5 | Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 6 - 10 | Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 11 - 20 | Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 21 - 30 | Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 31 - 40 | Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 41 - 50 | Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater. |

ii. If the mitigation bank operator chooses not to rectify those measures, the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall continue only if the initially available credits (i.e., 25 percent) have not yet been debited, and shall cease when those initially available credits are debited. If credits debited already exceed the initially available credits, the secretary shall not require the mitigation operator to compensate for credits already debited.

. If a periodic review reveals that the mitigation bank operator has complied with the MOA, total and available credits shall be adjusted as follows:

i. If the habitat is responding as predicted,

(a). the amount of total credits which shall be made available for marsh mitigation banks shall be determined according to the following table:

| Year of Review | Available Credit |
|---|---|
| 5 | 50 percent of total credit minus previously debited credit. |
| 10 | 75 percent of total credit minus previously debited credit. |
| 15 | 100 percent of total credit minus previously debited credit. |

(b). the amount of total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table:

| Year of Review | Available Credit |
|---|---|
| 5 | 35 percent of total credit minus previously debited credit. |
| 10 | 50 percent of total credit minus previously debited credit. |
| 20 | 65 percent of total credit minus previously debited credit. |
| 30 | 80 percent of total credit minus previously debited credit. |
| 40 | 100 percent of total credit minus previously debited credit. |

ii. If the habitat is responding better than predicted and the secretary anticipates that the total credits to be generated would likely be greater than the original projection of total credits, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table:

| Year of Recalculation | Available Credit |
|---|---|
| 5 | 50 percent of recalculated total credit minus previously debited credit. |
| 10 | 75 percent of recalculated total credit minus previously debited credit. |
| 15 | 100 percent of recalculated total credit minus previously debited credit. |

(b). the amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table:

| Year of Recalculation | Available Credit |
|---|---|
| 5 | 35 percent of recalculated total credit minus previously debited credit. |
| 10 | 50 percent of recalculated total credit minus previously debited credit. |
| 20 | 65 percent of recalculated total credit minus previously debited credit. |
| 30 | 80 percent of recalculated total credit minus previously debited credit. |
| 40 | 100 percent of recalculated total credit minus previously debited credit. |

iii. If the habitat is responding favorably but not as well as predicted, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the following table:

| Year of Review | Available Credit |
|---|---|
| 5 | Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 10 | Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 15 | Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater. |

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the following table:

| Year of Review | Available Credit |
|---|---|
| 5 | Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 10 | Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 20 | Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 30 | Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater. |
| 40 | Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater. |

(c). the secretary shall not require the mitigation bank operator to compensate for credits already debited as long as the mitigation bank continues to operate.

iv. if implementation of the mitigation bank is adversely affecting the bank area (i.e., actually producing less ecological value than would have been produced without implementation of the mitigation bank):

(a). the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall cease unless and until the mitigation bank operator implements measures, as prescribed by the secretary, to reverse the adverse effect;

(b). if the adverse effect is not reversed, the secretary may not require the mitigation bank operator to ·ensate for credits already debited;

(c). if the mitigation bank operator attempts to reverse the adverse effect, the debiting of mitigation credits may continue, but shall not go beyond the initially available credits (i.e., 25 percent) until the secretary determines that adverse affect is reversed;

(d). if the adverse effect is reversed, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank; and

(i). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(a); and

(ii). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(b);

(e). the secretary shall determine if the adverse effect has been reversed based on field investigations; consultation with the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator; and other methods the secretary deems appropriate.

d. If a periodic review reveals that the mitigation bank operator has failed to comply with the MOA, unless such failure is due to force majeure, the debiting of mitigation credit shall cease and shall not resume unless the compliance failures are rectified within 90 days from a notification by the secretary of apparent failures:

i. if the compliance failures are rectified, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank if it is anticipated that such a recalculation would yield a result substantially different from the current projection:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(a);

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(b);

ii. if the compliance failures are not rectified, the secretary may require the mitigation bank operator to provide compensatory mitigation to offset the ecological value of the credits which were debited, but not actually produced, and the secretary may require additional measures via permit modification or revocation.

11. Use of Mitigation Banks for Meeting Compensatory Mitigation Requirements

a. The mitigation bank shall not be considered operational until the following conditions have been met:

i. the mitigation bank operator has submitted to the department the mitigation bank establishment fee (§724.F.3);

ii. the MOA described in §724.F.8 has been signed

by the bank operator and the secretary;

iii. the mitigation bank operator has provided evidence that one of the options required pursuant to §724.F.7 has been selected and the conditions of such option have been met;

iv. the wetland mitigation measures described in a signed MOA have been fully implemented; or at least the initial phase(s) of the mitigation measures have been implemented if the signed MOA calls for phased implementation.

b. A permit applicant may acquire, subject to approval by the secretary, mitigation credits from the operator of an approved mitigation bank to meet compensatory mitigation requirements; the applicant is required to provide written evidence to the secretary that such acquisition has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary; mitigation credits may be acquired as compensatory mitigation for activities which are not subject to this Chapter, provided that the secretary is advised of any such transactions; acquired credits shall be debited from available credits.

c. Mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

d. The type of, and acceptability of utilizing, igation credits shall be determined in accordance with 24.J.

e. The quantity of credits to be debited shall be determined in accordance with §724.C.

f. The secretary shall maintain an account of total, available, and debited credits for each approved mitigation bank.

g. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are available from that mitigation bank, shall be accomplished as follows:

i. the applicant shall acquire, from the mitigation bank operator, the type and quantity of mitigation credits equivalent to the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total credits for that mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the mitigation bank and from the calculation of total credits.

h. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation :, if sufficient credits are not available from that mitigation bank, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

12. Any donation, sale, trade, or other transfer of mitigation credits, for purposes other than those provided in §724.F.11, must receive approval of the secretary and shall be allowed only upon a concurrent transfer of the mitigation bank MOA or upon concurrent execution of a separate MOA between the recipient of those credits and the secretary.

G. Advanced Mitigation Projects

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to implement advanced mitigation projects.

2. A party which establishes an advanced mitigation project shall be referred to as an advanced mitigation sponsor.

3. In determining the acceptability and appropriateness of establishing an advanced mitigation project, the secretary shall consider the following factors:

a. the potential advanced mitigation sponsor's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the advanced mitigation sponsor's willingness and potential ability to maintain the advanced mitigation project for a period of time determined to be appropriate for the subject project;

c. the advanced mitigation project's potential to create, restore, protect, and/or enhance vegetated wetlands and the project's potential to be "self-maintaining" for the appropriate period of time;

d. the advanced mitigation project's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the advanced mitigation project's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the advanced mitigation project; and

f. whether the proposed advanced mitigation project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, and/or enhance vegetated wetlands.

4. The area from which credits would accrue for advanced mitigation projects shall not exceed 20 acres. In certain special cases, however, the secretary may allow expansion of the area from which credits would accrue, provided that after a waiting period of at least five years from project implementation a habitat re-evaluation demonstrates that an area beyond 20 acres has been benefitted.

5. In addition to the fees identified at §§723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, establishment, habitat evaluation, and periodic review of advanced mitigation projects according to the following table:

| | |
|---|---|
| ·formal Review | $0 |
| initial Evaluation Fee | $50 |
| Establishment Fee | $100 |
| Post-Implementation Evaluation Fee | $250 |
| Periodic Review Fee | $50 |

6. Use of Advanced Mitigation Credits

a. Advanced mitigation credits shall not be available for use until the following conditions have been met:

i. the advanced mitigation sponsor has submitted all necessary fees to the department;

ii. the MOA described in §724.G.7.h has been signed by the advanced mitigation sponsor and the secretary;

iii. the wetland mitigation measures described in the signed MOA have been implemented and in place for one year or more, as determined on an individual case basis;

iv. the secretary has, pursuant to §724.G.9, performed the post-implementation evaluation and determined the type and quantity of advanced mitigation credits which would be attributable to the subject advanced mitigation ect.

b. Advanced mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

c. If the advanced mitigation sponsor is a permit applicant, the sponsor may use, subject to approval by the secretary, advanced mitigation credits from its approved advanced mitigation project to meet its compensatory mitigation requirements; other permit applicants may acquire advanced mitigation credits from the sponsor of an approved advanced mitigation project to meet compensatory mitigation requirements, subject to approval by the secretary and subject to following limitations.

i. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a local governmental entity may be used to meet compensatory mitigation requirements only for activities occurring within the geographic limit of the sponsoring entity's jurisdiction.

ii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a private entity (including but not limited to businesses, industry, landowners, resource conservation groups) may be used to meet compensatory mitigation requirements only for activities undertaken by the advanced mitigation sponsor or for activities ·ertaken on property owned by the advanced mitigation isor.

iii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a state or federal agency may be used to meet compensatory mitigation requirements only for activities undertaken by the sponsoring agency or on the refuge, management area, etc. where the advanced mitigation project is located.

d. For situations where the permit applicant is not the sponsor of the advanced mitigation site, the applicant is required to provide written evidence to the secretary that the acquisition of credits has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary.

e. The secretary shall maintain an account of total, debited, and remaining advanced mitigation credits for each approved advanced mitigation project.

f. The type of, and acceptability of utilizing, advanced mitigation credits shall be determined in accordance with §724.J.

g. The quantity of credits needed to meet compensatory mitigation requirements shall be determined in accordance with §724.C.

h. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are remaining for that advanced mitigation project, shall be accomplished as follows:

i. the sponsor shall use, or other permit applicants shall acquire, the appropriate type and quantity of advanced mitigation credits needed to offset the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total and remaining credits for that advanced mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the advanced mitigation project and from the calculation of total and remaining credits.

i. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are not available from that advanced mitigation project, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

7. Proposals for the establishment of advanced mitigation projects shall be processed as follows:

a. The secretary shall provide, without charging a fee, potential advanced mitigation sponsors an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential advanced mitigation sponsors shall submit a written request for the secretary to consider designation of an

advanced mitigation project; the following must be provided h the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is on file with the department;

iii. a statement describing the extent to which the project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the advanced mitigation project initial evaluation fee of $50.

c. The secretary shall review the request and within 20 days:

i. inform the potential advanced mitigation sponsor of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the 'est as complete, the secretary shall invite state advisory _ncies, the Corps, and federal advisory agencies to participate in an on-site meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 60 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as an advanced mitigation project, and:

i. if the project is preliminarily determined to be acceptable as an advanced mitigation project, the secretary shall inform the potential advanced mitigation sponsor of such determination; or

ii. if the project is preliminarily determined to be unacceptable as an advanced mitigation project, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as an advance mitigation project.

f. Once the proposed project is preliminarily determined to be acceptable as a advanced mitigation project, potential advanced mitigation sponsor shall obtain any necessary permits/authorizations in accordance with applicable state and federal laws.

g. Once all necessary permits/authorizations have been obtained, the potential advanced mitigation sponsor shall submit the advanced mitigation project establishment fee of $100.

h. Within 10 days of receipt of the establishment fee, the secretary shall initiate negotiations among the department, the potential advanced mitigation sponsor, other state agencies, the Corps, and federal advisory agencies to develop a formal MOA. The MOA signed by the secretary and the advanced mitigation sponsor shall serve as the formal document which designates a project as an advanced mitigation project. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the advanced mitigation project by signing the MOA. The formal MOA shall, at a minimum:

i. provide a statement of purpose;

ii. define the area of benefit of the advanced mitigation project;

iii. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

iv. establish the period of time that the advanced mitigation project would be operational;

v. identify the habitat assessment methodology utilized to establish the quantity of advanced mitigation credits, including an explanation of any calculations necessary to account for a project life which may differ from 20 years for marsh projects and which may differ from 50 years for forested wetland projects;

vi. sufficiently identify pre-project conditions to allow comparison at the time of the post-implementation habitat evaluation;

vii. specify the period of time allowed for project implementation, the period of time between completion of implementation and the post-implementation habitat evaluation (one year or more), the period of time allowed for the advanced mitigation sponsor to submit the post-implementation habitat evaluation fee of $250, the period of time allowed for the habitat evaluation to be completed by the secretary, and the point in time when advanced mitigation credits would be made available to the advanced mitigation sponsor;

viii. if deemed necessary for the subject project, identify a schedule for review of habitat response subsequent to the post-implementation habitat evaluation;

ix. if deemed necessary for the subject project, identify the advanced mitigation sponsor's responsibilities for providing post-construction information (e.g., as-built drawings), monitoring information, or other information necessary for any habitat response reviews; and

x. if deemed necessary for the subject project, identify any requirements or mechanisms for performing or assuring maintenance of project features.

8. In accordance with the MOA, the advanced mitigation ısor shall implement the advanced mitigation project and, .ıe appropriate time, submit the post-implementation habitat evaluation fee of $250.

9. The secretary shall determine the quantity, by habitat type, of advanced mitigation credits available for donation, sale, trade, or use from an advanced mitigation project within the time frame established in the MOA and in accordance with the following.

a. The secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor to participate in the determination of advanced mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor made during, or received in writing within 20 days of, each field investigation or other meeting held to determine advanced mitigation credits.

b. The total quantity of advanced mitigation credits (AAHUs or CHUs), by habitat type, attributable to the advanced mitigation project shall be determined by applying the methodology described in §724.C.

c. For projects which have been partially implemented prior to designation as an advanced mitigation project, advanced mitigation credits would be limited to those ·ibuted to only those features implemented after execution .e MOA. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of the total advanced mitigation credits.

10. The use of advanced mitigation credits shall be in accordance with §724.G.6.

H. Individual Compensatory Mitigation Measures

1. A permit applicant may implement an individual mitigation measure or measures to satisfy the compensatory mitigation requirements of a proposed activity.

2. The secretary shall determine the acceptability of an individual compensatory mitigation measure(s) in accordance with §724.J.

3. The sufficiency of an individual mitigation measure or measures shall be determined in accordance with §724.C, best professional judgment, or a combination of the methodology presented in §724.C and professional judgment. When applying the methodology presented in §724.C, the secretary shall consider the probable life of the proposed mitigation measure and the future ability and willingness of the permit applicant to maintain the proposed mitigation.

I. Monetary Contributions to the Affected Landowner, Affected Parish, and/or the Louisiana Wetlands Conservation and Restoration Fund

1. Compensatory mitigation may be accomplished by monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund.

2. Such monetary contributions shall be used only to offset anticipated unavoidable net losses of ecological values and shall be selected as the compensatory mitigation option only in accordance with §724.J.

3. The secretary shall determine the amount of the monetary contribution by the formula: (anticipated unavoidable net loss of ecological value, measured in AAHUs) × (annual base mitigation cost) × (project years) = compensatory mitigation cost.

4. The determination of anticipated unavoidable net loss of ecological value, in AAHUs, that would result from the proposed activity shall be made in accordance with §724.C.

5. The annual base mitigation cost (ABMC) represents the cost of producing one AAHU for one year, within each habitat type within each hydrologic basin. The ABMC is based on example projects which could feasibly be constructed within each habitat type, within each basin, and was determined by the following formula: [sum for example projects (annual project cost / AAHUs produced)] / number of example projects.

6. ABMCs are provided in the following table:

| Hydrologic Basin | Fresh Marsh | Inter. Marsh | Brack. Marsh | Saline Marsh | Hardwoods | Fresh Swamp |
|---|---|---|---|---|---|---|
| Pontchartrain | 380 | 396 | 420 | 443 | 32 | 283 |
| Breton | 364 | 389 | 411 | 518 | 32 | 283 |
| Mississippi R. | 331 | 331 | | | 32 | 283 |
| Barataria | 373 | 389 | 411 | 443 | 32 | 283 |
| Terrebonne | 338 | 353 | 376 | 443 | 32 | 283 |

| Hydrologic Basin | Fresh Marsh | Inter. Marsh | Brack. Marsh | Saline Marsh | Hardwoods | Fresh Swamp |
|---|---|---|---|---|---|---|
| Atchafalaya R. | 350 | 350 | | | 32 | 283 |
| Teche/Vermilion | 369 | 387 | 412 | 455 | 32 | 283 |
| Mermentau | 369 | 387 | 412 | 455 | 32 | 283 |
| Calcasieu/Sabine | 359 | 387 | 412 | 455 | 32 | 283 |

7. The secretary may periodically update the table at §724.I.6 utilizing the best available data, in accordance with provisions of R.S. 49:953.

8. If compensatory mitigation is to be accomplished via monetary contribution, the issued permit shall include a condition which:

a. identifies the monetary amount determined pursuant to §724.I.3-6; and

b. specifies that the money would be transferred, upon request by the secretary, to the affected landowner, affected parish, or the Louisiana Wetlands Conservation and Restoration Fund as selected by the secretary in accordance with §724.I.9.a or §724.I.12-20.

9. To ensure compliance with such a permit condition, ermit shall not be issued:

a. until the monetary contribution has been made to the affected landowner, provided that a plan for use of that money has been accepted by the secretary prior to, or during, the permit processing period, subsequent to coordination among the applicant, affected landowner, the Corps, and state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation; or

b. until the secretary has received a letter of credit on behalf of the permit applicant, pursuant to §724.I.10; or

c. until it has been demonstrated to the secretary that a surety bond has been established by the permit applicant pursuant to §724.I.11.

10. If a letter of credit is utilized, the letter:

a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permittee fails to comply with the permit condition required by §724.I.8;

b. should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that ignificantly under capitalized" or "critically under alized" as defined in Section 38 of the Federal Deposit Insurance Act;

c. shall include a clause which causes an automatic renewal of the letter of credit until such time that the secretary returns the letter of credit to the permit recipient and/or depository; and

d. shall require the secretary to return the letter of credit to the permit recipient and/or depository upon compliance with the permit condition.

11. If a surety bond is utilized, the bond:

a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permit recipient fails to comply with the permit condition required by §724.I.8;

b. shall be written by a surety or insurance company which, at the time of permit issuance, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus;

c. shall have a term of five years; and

d. shall require the secretary to release the bond to the permit recipient upon compliance with the permit condition.

12. Unless a plan for the use of compensatory mitigation funds has been accepted by the secretary pursuant to §724.I.9.a, the secretary shall request proposals for the utilization of compensatory mitigation money from each affected landowner which demonstrated an interest, pursuant to §724.J.5.a.vi or §724.J.6.d.vi, in receiving compensatory mitigation. The secretary's request for proposals shall be made in writing and within 10 days of permit issuance. The request shall include the following:

a. identification of the permitted activity for which payment of compensatory mitigation money is being required;

b. information regarding the habitat type and ecological value (acreage and habitat value) to be strived for;

c. announcement of the sum of money potentially available; and

d. a request that the affected landowner provide to the secretary, in writing and within 25 days of receipt of such a request, a conceptual mitigation plan for use of the

compensatory mitigation money.

13. Proposals for expenditure of compensatory mitigation money shall be acted upon as follows:

a. Within 10 days of receipt of a conceptual mitigation proposal, the secretary shall forward the proposal to those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation. Concurrently, the proposal shall also be forwarded to the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

b. Over the following 60 days, the secretary shall interact with the interested agencies, the affected landowner, and the affected parish (if interested) to finalize the plan for use of the compensatory mitigation money. To be considered acceptable by the secretary, the plan must satisfy the criteria presented in §724.J.2-6. The 60-day period may be extended if requested by the landowner, provided that negotiations are being carried on in "good-faith."

c. If any permits/approvals are needed to implement the acceptable plan, the landowner shall submit the applications/requests to the appropriate entities within 20 days of the plan being deemed "acceptable."

d. If the affected landowner is unable to obtain the necessary approvals for a plan which had been deemed "acceptable" within 60 days of submittal due to concerns of, or lack of consent by, the Corps or state and federal advisory agencies, the secretary shall allow the landowner an additional 30 days to submit an alternate conceptual plan, and the alternate proposal shall be acted upon in accordance §724.I.13.

14. Once a plan is deemed "acceptable" and all necessary approvals have been obtained:

a. within 30 days, the landowner shall provide the secretary with a detailed written estimate of the total cost of implementing the plan;

b. within 10 days of receipt of the estimate, the secretary shall:

i. review the estimate for apparent completeness and accuracy, etc.; and

ii. if the estimate does not appear complete, accurate, and generally in order, identify the deficiencies and request the landowner to revise and submit a complete and accurate estimate; the revised estimate shall be submitted within 15 days of receipt of the secretary's request;

c. within 10 days of receipt of an apparently complete and accurate estimate, the secretary shall request in writing, the permit recipient to provide to the affected landowner a payment of money equal to the estimate, but not to exceed the amount identified in the issued permit;

d. the permit recipient shall make such payment to the affected landowner and provide evidence to the secretary that such payment has been made within 30 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of evidence by the secretary;

e. if such payment is made to the landowner:

i. the plan shall be initiated within 45 days of receipt of the payment unless the accepted plan includes seasonal considerations for implementing certain measures, such as grass or tree plantings;

ii. within 15 days of the end of the period allowed for initiation, the landowner shall inform the secretary in writing of the status of plan implementation;

iii. the plan shall be completely implemented within 90 days of initiation unless the accepted plan includes a specific time allotment for completion, or an unexpected circumstance provides a valid reason for delay;

iv. within 30 days of completion of the accepted plan, the landowner shall submit evidence that the accepted plan has been implemented, including a copy of invoices, bills, receipts demonstrating the total monetary expenditure;

v. if the landowner fails to implement the plan in a timely manner, the landowner shall make payment, equal to the amount received from the permit recipient, to the Louisiana Wetlands Conservation and Restoration Fund within 30 days of being requested by the secretary;

vi. if the landowner fails to implement the plan in a timely manner and fails to make payment to the Louisiana Wetlands Conservation and Restoration Fund in a timely manner, the landowner shall be subject to legal remedies to compel the landowner to make such payment, and further, the landowner shall be ineligible to receive compensatory mitigation money in the future; and

vii. if the total expenditure for implementing the plan is less than the amount paid by the permit recipient, the landowner shall:

(a). utilize the difference within 60 days to implement an additional wetland creation, restoration, protection, and/or enhancement measure(s) approved by the secretary; or

(b). pay the difference to the Louisiana Wetlands Conservation and Restoration Fund;

f. if the permit recipient fails to make the requested payment to the landowner within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary;

g. if the secretary pursues payment via the letter of credit or surety bond:

i. the resultant money shall be deposited into the iisiana Wetlands Conservation and Restoration Fund; and

ii. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option; and

iii. the secretary shall negotiate with the affected landowner(s) on an individual case basis to formulate an acceptable plan for use of that money on the affected landowner's property; or

iv. if an acceptable plan can not be negotiated for the affected landowner's property, the money shall be utilized pursuant to §724.I.21.

15. The secretary may delay the process of formulating a plan for utilizing compensatory mitigation money for the purpose of combining the compensatory mitigation money from more than one permitted activity, provided that:

a. prior to delaying the process, the secretary considers the views of those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

b. prior to delaying the process, the secretary considers the views of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit cessing, an interest in participating in the selection of ropriate compensatory mitigation;

c. the time elapsed from issuance of the first permit to implementation of the mitigation measure(s) would not be expected to exceed two years; and

d. the landowner (or parish) is aware, and can demonstrate, that additional impacts are likely to be proposed on the ownership (or within the parish) within 180 days, and the landowner (or parish) has obtained the necessary permits/approvals for a specific mitigation measure that would require an amount of money greater than that generated from a single permitted activity.

16. A landowner's "right" to utilize the required compensatory mitigation money would cease:

a. if the landowner failed to comply with the requests described in §724.J.5.a.vi, §724.J.6.d.vi, or §724.I.12.d; or

b. if the secretary determines, during the interaction period described in §724.I.13.b, that the attempt to derive a plan mutually acceptable to the landowner and the secretary is futile; or

c. if the landowner failed to comply, without good reason, within the time periods described in §724.I.13.c-d and §724.I.14.a, b, and e; or

d. if the necessary permits/approvals described at §724.I.13.c have not been obtained within 180 days of the submittal of applications/requests, due to failure on the part of the landowner to provide, in a timely manner, adequate information or other material necessary for processing the applications/requests; or

e. if, following an attempt to combine compensatory mitigation money from more than one permitted activity, pursuant to §724.I.15, the mitigation measure is not implemented within two years.

17. If a landowner's "right" to utilize the compensatory mitigation money should cease, the secretary shall, in writing and within 10 days of such cessation:

a. inform the landowner that his/her right to utilize the compensatory mitigation money has ceased; and

b. inform the affected parish of the potential availability of that money for implementing wetland creation, restoration, protection, and/or enhancement measures; such notification shall include the items identified in §724.I.12.a-d.

18. Proposals for expenditure of compensatory mitigation money by a parish shall be acted upon in the manner described for a landowner in §724.I.13 and implemented in the manner described for a landowner in §724.I.14-15.

19. A parish's "right" to utilize the compensatory mitigation money would cease if the conditions described in §724.I.16 existed with regard to the parish.

20. If a parish's "right" to utilize the required compensatory mitigation money should cease, the secretary shall within 10 days of such cessation:

a. inform the parish that its right to utilize the compensatory mitigation money has ceased; and

b. request the permit recipient to provide payment of the amount of money identified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of such payment by the secretary.

21. If such payment is made to the Louisiana Wetlands Conservation and Restoration Fund, the secretary shall select a specific wetland creation, restoration, protection, and/or enhancement measure(s) to be implemented with that money, following consideration of the comments of those state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation during permit processing and utilize that money to implement the selected measure.

22. If the permit recipient does not make the requested payment to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary.

23. If the secretary pursues payment via the letter of credit

surety bond:

a. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund and utilized pursuant to §724.I.21; and

b. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option.

J. Selecting Compensatory Mitigation

1. In selecting compensatory mitigation, the secretary shall consider the recommendations and comments of those state and federal agencies which demonstrated an interest, during permit processing, in participating in the selection of appropriate compensatory mitigation. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

2. The secretary shall ensure that the selected compensatory mitigation, in order of priority, is sufficient (§724.J.3), properly located (§724.J.4), and accomplished by the most desirable available/practicable option (§724.J.5-6).

3. The selected compensatory mitigation proposal must completely offset the unavoidable net loss of ecological value, ss a variance is granted pursuant to §724.K;

4. To be considered properly located, the compensatory mitigation must be selected according to the following prioritized criteria:

a. must have an anticipated positive impact on the ecological value of the Louisiana Coastal Zone;

b. should be on-site if the opportunity exists and if the compensatory mitigation would contribute to the wetland health of the hydrologic basin;

c. should be located, in accordance with R.S. 214.41.E, on the affected landowner's property, provided the secretary determines that the proposed mitigation is acceptable and sufficient;

d. shall be located within the same hydrologic basin as the proposed impact, unless no feasible alternatives for compensatory mitigation exist in that basin; and

e. shall, in order of preference, be located within the same habitat type as the proposed impact; or produce ecological values which would be similar to those lost as a result of the proposed activity, despite being located in a different habitat type; or contribute to the overall wetland health of the hydrologic basin, despite being located in a different habitat type.

5. The procedure for selecting compensatory mitigation for proposed activities which would adversely impact vegetated wetlands on only one landowner's property shall be as follows:

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall:

i. determine the habitat type and extent (i.e., acreage) of anticipated impact to the affected landowner;

ii. in writing, provide to the applicant basic information regarding the anticipated impact (acreage, habitat type);

iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated with the affected landowner; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;

iv. in writing, provide to the affected landowner basic information regarding the anticipated impact (acreage, habitat type);

v. in writing, suggest to the landowner, that he/she assist the applicant in developing a compensatory mitigation proposal; and

vi. in writing, request that the landowner submit to the secretary, in writing and within 30 days of such request, a statement which would:

(a). indicate acceptance of the applicant's compensatory mitigation proposal; or

(b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or

(c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or

(d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

b. An applicant's failure to submit a compensatory mitigation proposal as described in §724.J.5.a.iii may cause an interruption of the permit processing period identified at

§723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

c. A landowner's failure to submit the statement described in §724.J.5.a.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

d. All compensatory mitigation proposals submitted by the landowner or applicant; negotiated among the landowner, applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

e. Subject to §724.J.1-4, the secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. acquisition of mitigation credits, if the affected landowner has an approved mitigation bank;

ii. use of advanced mitigation credits if the affected landowner has an approved advanced mitigation project, if allowable pursuant to §724.G.6;

iii. if the proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowner (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowner forfeited his/her right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on the affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation proposal on the affected landowner's property;

v. acquisition of credits from a mitigation bank not on the affected landowner's property;

vi. use of advance mitigation credits from an advanced mitigation project not on the affected landowner's property, if allowable pursuant to §724.G.6;

vii. individual mitigation proposal not on the affected landowner's property;

viii. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary contribution pursuant to §724.I.

f. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10.0 acres.

6. For proposed activities which would impact vegetated wetlands on more than one landowner's property:

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall request the applicant to provide a map(s) to the secretary with accurate scale and sufficient detail to determine the extent of impact (i.e., acreage) to each landowner identified pursuant to R.S. 49:214.30.C.2.

b. At this time, the permit processing period identified at §723.C.4.f shall be interrupted until the requested map(s) has been provided.

c. When the anticipated impact to a given landowner would be less than 1.0 acre, it shall be considered unacceptable to allow that landowner to require compensatory mitigation to be performed on his/her property, unless it is determined to be acceptable by the secretary in certain special cases.

d. Within 10 days of receipt of the map(s) described in §724.J.6.a, the secretary shall:

i. determine the habitat type and extent (i.e., acreage) of anticipated impact to each affected landowner;

ii. in writing, provide to the applicant a list of affected landowners whose anticipated direct impact is 1.0 acre or greater and basic information regarding the anticipated impact (acreage, habitat type) to each of those landowners and for the entire project;

iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated among all affected landowners whose anticipated direct impact is 1.0 acre or greater; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;

iv. in writing, provide to each landowner whose anticipated direct impact is 1.0 acre or greater, basic information regarding the anticipated impact (acreage, habitat type) to the subject property and for the entire project;

v. in writing, suggest to each of those landowners, that they assist the applicant in developing a compensatory mitigation proposal; and

vi. in writing, request that each of those landowners submit to the secretary, in writing and within 30 days of such request, a statement which would:

(a). indicate acceptance of the applicant's compensatory mitigation proposal; or

(b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or

(c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or

(d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact a total of 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

e. An applicant's failure to submit a compensatory mitigation plan as described in §724.J.6.d.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

f. A landowner's failure to submit the statement described in §724.J.6.d.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

g. All compensatory mitigation proposals submitted by the landowner(s) or applicant; negotiated among the landowner(s), applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

h. In situations where landowners have proposed separate/multiple compensatory mitigation measures, the secretary shall consider the following factors in selecting compensatory mitigation:

i. cost effectiveness of offsetting ecological value losses via separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s);

ii. practicability, on the part of the secretary, of confirming/enforcing implementation, operation, and maintenance of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s); and

iii. the long-term ecological benefits of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s).

i. The secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. if an affected landowner has an approved mitigation bank, acquisition of mitigation credits, at least for that portion of the impact which occurs on that landowner's property;

ii. if an affected landowner has an approved advanced mitigation project, use of advanced mitigation credits, for that portion of the impact which occurs on that landowner's property, if allowable pursuant to §724.G.6;

iii. if the proposed activity would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowners (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution, or

(b). if the affected landowners forfeited their right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on an affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation measure(s) acceptable to all interested landowners;

v. individual compensatory mitigation measure(s), that would have a positive effect on one or more, but not necessarily all, of the interested landowner's properties;

vi. acquisition of credits from a mitigation bank not on an affected landowner's property;

vii. use of advanced mitigation credits from an approved advanced mitigation project not on an affected landowner's property, if allowable pursuant to §724.G.6;

viii. individual mitigation proposal not on an affected landowner's property;

ix. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary

contribution pursuant to §724.I.

j. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10.0 acres.

K. Variances from Compensatory Mitigation Requirements

1. Pursuant to the remainder of this Section, the secretary shall grant a full or partial variance from the compensatory mitigation requirement (variance) when a permit applicant has satisfactorily demonstrated to the secretary:

a. that the required compensatory mitigation would render impracticable an activity proposed to be permitted; and

b. that such activity has a clearly overriding public interest.

2. Variance Request Requirements

a. Following the application of §724.B; development of a compensatory mitigation option(s) pursuant to §724.J; and presentation by the secretary (in accordance with §723.C.8.b) of a draft permit, including conditions for compensatory mitigation, the permit applicant may file a variance request with the secretary.

b. The variance request must be filed and resolved prior to initiation of the proposed activity.

c. The variance request must be filed in writing and 'ude the following:

i. a statement explaining why the proposed compensatory mitigation requirement would render the proposed activity impracticable, including supporting information and data; and

ii. a statement demonstrating that the proposed activity has a clearly overriding public interest by explaining why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, including supporting information and data.

d. As part of the requirements of §724.K.2.c, requests for variances for mineral exploration, extraction, and production activities shall include production projections, including supporting geologic and seismographic information; a projected number of new jobs; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

e. As part of the requirements of §724.K.2.c, requests for variances for mineral transportation activities shall include information regarding the amount of product proposed to be transported; the destination of the product; a projected number of new jobs and their location; and the expected duration of such employment opportunities. The secretary shall ensure any proprietary information is adequately protected.

f. As part of the requirements of §724.K.2.c, requests for variances for flood protection facilities shall include the following information:

i. a detailed description of the existing infrastructure which would be protected by the flood protection facility, including public facilities (e.g., roads, bridges, hospitals, etc.), residential areas (including approximate number of homes and associated residents), industries, and businesses;

ii. detailed drawings or photographic documentation depicting the locations of the above infrastructure components;

iii. a detailed description of the extent and severity of past flooding problems and projections of potential damages due to future flooding events; and

iv. a description of nonstructural and structural flood protection and reduction measures which have been undertaken or implemented in the past, or are reasonably expected to occur in the future.

g. As part of the requirements of §724.K.2.c, all requests for variances shall include cost estimates for implementing the proposed project and performing compensatory mitigation.

h. The request shall be accompanied with a nonrefundable filing and hearing fee of $250.

3. Review and Notification by the Secretary

a. The secretary shall review a variance request and inform the applicant of its completeness within 15 days of receipt.

b. If the variance request is not complete or if additional information is needed, the secretary shall request from the applicant, the additional information necessary to evaluate and process the request. If the applicant fails to respond to such request within 30 days, the secretary may advise the applicant that his request will be considered withdrawn unless the applicant responds within 15 days of such advisement. If the request is considered withdrawn, to reinstate the request, the applicant will be required to resubmit the request, accompanied with an additional nonrefundable filing and hearing fee of $250.

c. The secretary shall not issue a variance prior to publishing a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement", and accepting and considering public comments.

d. Within 30 days of the secretary's acceptance of the variance request as complete, the secretary shall review the request, considering the criteria set forth in §724.K.1, and either:

i. notify the applicant of the secretary's intention to deny the request, including his rationale; or

ii. determine that the variance request warrants further consideration and publish a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

e. "Notices of Intent to Consider a Variance from the mpensatory Mitigation Requirement" shall be published in the official state journal, mailed to Joint Public Notice mailing recipients and all persons that submitted comments on the original public notice, and provided to the local governing authority of the parish or parishes where the proposed activity would take place.

f. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall contain the following:

i. name and address of the applicant;

ii. the location and description of the proposed activity;

iii. a description of the area to be directly impacted (acres and habitat types) and quantification of anticipated unavoidable net losses of ecological value;

iv. a description of the compensatory mitigation plan proposed as a condition of permit issuance;

v. a description of the nature and extent of the variance;

vi. a summary of the information presented by the applicant in fulfillment of §724.K.2.c-g;

vii. an unsigned secretarial "Statement of Finding" arding why the proposed compensatory mitigation quirement may render the proposed activity impracticable and comparing the public interest benefits of the proposed activity to the public interest benefits of requiring compensatory mitigation for the wetland values lost as a result of the activity; and

viii. notification that public comments, including requests for public hearings, will be accepted for 25 days from the date of publication of the "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

4. Public Hearings on Variance Requests

a. A public hearing shall be held when:

i. requested by the applicant following the secretary announcing his intention to deny a variance request;

ii. the secretary determines that a public hearing is warranted, following a review of comments received during the period described in §724.K.3.f.viii; or

iii. the conditions described at §723.C.6.c are met.

b. Public hearings shall be conducted in accordance with §727.

5. Final Variance Decision

a. The secretary shall issue a final variance decision ed on full consideration of the criteria set forth in §724.J.1, information submitted by the applicant, comments received during the public comment period, and comments received at the public hearing if one is held. A "Statement of Finding" described in §724.K.5.b shall be prepared:

i. within 15 days of the closing of the public comment period if the secretary determines that a public hearing is not warranted; or

ii. within 15 days of the public hearing if one is held.

b. The secretary shall prepare a signed final "Statement of Finding" which explains the reasons for denying a variance or describes why the proposed compensatory mitigation requirement would have rendered the proposed activity impracticable, describes why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of requiring compensation for wetland values lost as a result of the activity; and describes the nature and extent of the granted variance. This statement shall be part of the permit record, available to the public, and attached to the granted permit.

c. The final variance decision is subject to reconsideration as described at R.S. 49:214.35.

6. Duration of Variance

a. A variance shall be valid only for the original permit recipient. Any party receiving a transferred permit may seek a variance, through the procedures established by §724.K.2-5.

b. A variance shall be valid for the initial terms of the permit to which it is specifically related, unless the variance is modified, or revoked in accordance with §724.K.7.

c. The secretary may extend a variance, in accordance with §723.D.5., concurrently with the extension of the permit to which it is specifically related.

7. Modification or Revocation of Variance

a. If requested by the applicant, the secretary shall consider modifying a variance, according to the procedures described in §724.K.2-5.

b. A third party may request the secretary to consider a modification or revocation of a variance, based on lack of conformance to the criteria set forth in §724.K.1.

c. The secretary may revoke a variance, if:

i. there are inaccuracies in the information furnished by the applicant during the permit or variance review period; or

ii. there is any violation of the conditions and limitations of the permit to which the variance is specifically related; or

iii. there is any violation of the conditions and limitations of the variance; or

iv. the applicant misrepresented, without regard to intent, any material facts during the variance or permit review period; or

v. the actual public interests of the activity turn out to be significantly less than that estimated by the applicant in its statements filed in association with the variance request

review.

d. The procedure for revoking a variance shall be as follows:

i. The secretary shall, in writing, inform the variance holder that revocation is being considered, providing reasons for the potential revocation and advising the variance holder that he will be given, if requested within 10 days from receipt of the notice, an opportunity to respond to the reasons for potential revocation.

ii. After consideration of the variance holder's response, or if no response is received, the secretary shall provide written notice to the variance holder, allowing the variance to remain valid or explaining newly imposed compensatory mitigation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

## Subchapter D. Local Coastal Management Programs

### §725. Development, Approval, Modification, and Periodic Review of Local Coastal Management Programs

A. Letter of Intent. Parishes intending to apply for grants prepare a local coastal management program (LCMP) shall notify the secretary of DNR by sending a letter of intent approved by the parish Police Jury or Council.

B. Program Development

1. The process for developing a local program will consist of:

a. A division of the parish's coastal zone into units that have similar environmental and natural resource characteristics (environmental management units) and an identification and mapping of the features, resources, and resource users of those units.

b. An analysis of the projected social and economic growth for the parish. This analysis must include projected population growth, projected expansion of economic sectors, estimated demand for and use of land, and an assessment of how these projected changes will affect the natural resources of each management unit as well as the parish as a whole.

c. An identification of existing and potential resource-use conflicts including their location and severity. Identified problems should be mapped to the extent possible.

d. An identification of particular areas, if any, within the parish requiring special management as a result of their unique natural resource or development potentials.

e. The development of goals, objectives and policies for the management of the parish's coastal zone. This shall include those goals and objectives applicable to the entire parish coastal zone and specific objectives and priorities of use for each management unit and identified particular area, if any. Except as specified in Subsection D.1.d below, these policies, objectives and priorities of uses must be consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines.

f. The development of procedures providing for the full participation of federal, state, local and municipal government bodies and the general public in the development and implementation of the parish program.

g. The development of the necessary authorities, procedures, and administrative arrangements for reviewing, issuing, and monitoring permits for uses of local concern.

h. The development of special procedures and methods for considering uses within special areas designated pursuant to §214.29 of the SLCRMA, if any, and the impacts of uses on the special areas.

i. The development of special procedures and methods for considering uses of greater than local benefit and uses affecting state or national interests.

C. Program Content

1. Local programs may be submitted for approval after being developed in accordance with Subsection B and shall consist of:

a. a summary of the local program;

b. maps and descriptions of the natural features, resources, and existing land use in each management unit. These maps shall depict the division of the coastal areas into coastal waters and wetlands, transitional areas, fastlands, and lands more than 5 feet above mean sea level;

c. the results of the social and economic analysis carried out pursuant to Subsection B.1.b, above;

d. a description of those existing and future resource-use conflicts identified pursuant to Subsection B.1.c, above;

e. an identification of those particular areas, if any, requiring special management as described in Subsection B.1.d above, as well as the special policies and/or procedures to be applied to these areas;

i. statement of the goals, objectives, policies, and priorities of uses included in the program, as described in Subsection B.1.e.;

ii. a statement assuring that the policies of the local program are consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines and that the local program shall be interpreted and administered consistently with such policies, objectives, and guidelines;

f. a description of the authorities and administration arrangements regulating uses of local concern, for reviewing, issuing, and monitoring local coastal use permits, and for enforcing the local program, including:

i. a concise explanation of how the local program's 'stal management process is to work;

ii. a description and listing of those areas and uses that will require local coastal use permits;

iii. an illustrative list of particular activities which occur either in fastlands or on lands more than 5 feet above mean sea level that have, or may have, direct and significant impacts on coastal waters;

iv. an analysis of all ordinances included in the local program demonstrating that the effect of such ordinances, when applied to uses not subject to the local coastal use permit program, would result in compliance with the goals and provisions of the SLCRMA,as amended, the objectives of the Louisiana Coastal Resources Program (LCRP), and the policies of the coastal use guidelines.

v. a description of the administrative means by which the parish will coordinate with other governmental bodies during program implementation regarding:

(a). local program implementation, including copies of any interagency or intergovernmental agreements;

(b). multiparish environmental considerations;

(c). consideration by the parish of regional, state, or national interests; and

(d). regional, state, or national plans affecting the sh coastal zone and other projects affecting more than one parish;

vi. certified copies of all ordinances, plans, programs, and regulations proposed to be included in the program;

vii. a resolution from the governing body of the parish expressing approval of the local program as submitted and its intent to implement the submitted program subsequent to state approval;

g. documentation that the parish has provided a full opportunity for governmental and public involvement and coordination in the development of the local program. It must be shown that:

i. at least one public hearing was held in the coastal zone on the total scope of the proposed program;

ii. public notice of the availability of the draft proposed program was given at least 30 days prior to the hearing. Copies of the program must have been available for distribution to relevant state, federal and local governmental agencies, and the general public and were available for public inspection at reasonable hours at all libraries within the parish, the offices of the police jury, and the city or town hall of all the municipalities in the coastal zone;

iii. full consideration was given to comments received during program development and the public hearings.

D. Program Approval

1. Local programs may be submitted for approval after promulgation of these rules and the state guidelines. The following procedures shall apply:

a. Fifteen copies of the complete proposed local program shall be submitted to the secretary. The local government shall have additional copies available for distribution upon request. The secretary shall, within fifteen days of the filing of a complete program give public notice of the submittal of the proposed local program, of the availability of copies of the program for public review and of the date, time and place of a public hearing on the program and request public comment. The secretary shall give full consideration to all comments received.

b. The secretary shall, within 90 days of the giving of public notice, either approve the local program or notify the local government of the specific changes which must be made in order for it to be approved.

c. In order to approve the local program, the secretary must find that:

i. the program is consistent with the state guidelines and with the policies and objectives of the SLCRMA;

ii. the program submitted for approval contains all the elements required by Subsection C above and that the materials submitted are accurate and are of sufficient specificity to provide a basis for predictable implementation of the program;

iii. that the proposed program, and the policies, objectives, and priorities of use in the program, are of a sufficient comprehensiveness and specificity to address the identified resource-use conflicts and are consistent with the goals of the SLCRMA, the objectives of the LCRP, and the policies of the coastal use guidelines;

iv. full opportunity has been provided for federal, state, local and municipal governmental bodies and the general public to participate in the development of the program pursuant to Subsection C.1.g above;

v. the local government has included within the program all applicable ordinances and regulatory or management programs which affect the coastal zone; that these authorities are of sufficient scope and specificity to regulate uses of local concern; that the regulatory program meets all requirements for procedures and time frames established by the SLCRMA and regulations of the department; that sufficient authority is provided to enforce the local program, including provisions for those penalties provided by §214.36 of the SLCRMA, and that the program has met all substantive requirements of the SLCRMA and the regulations adopted pursuant thereto;

d. in reviewing a local program for consistency with the state guidelines the secretary, acting jointly with the secretaries of the Department of Natural Resources and the Department of Wildlife and Fisheries, may make reasonable interpretations of the state guidelines, insofar as they affect that

particular program, which are necessary because of local environmental condition or user practices. Local programs that may be inconsistent in part with the state guidelines may be approved notwithstanding the conflicts if the secretaries find that:

i. the local environmental conditions and/or user practices are justified in light of the goals of Act 361, (SLCRMA) the objectives of the LCRP, and the policies of the state guidelines;

ii. approval would result in only minimal and inconsequential variance from the objectives and policies of the act and the guidelines; and

iii. the local program provides special methods to assure that the conflicts remain minimal and inconsequential;

e. the local program shall become effective when approved by the secretary and officially adopted by the local government.

E. Modifications

1. Any significant proposed alteration or modification to an approved local program shall be submitted to the secretary for review and approval along with the following:

a. a detailed description of the proposed change;

b. if appropriate, maps of sufficient scale and detail depicting geographically how the program would be changed.

c. an explanation of how the proposed change would better accommodate local conditions and better serve to achieve the objectives of the state program and the local program;

d. a resolution from the local government expressing approval of the modification as submitted and its intent to implement the change subsequent to state approval;

e. all parish ordinances relevant to the proposed modification;

f. any comments from governmental units that may be affected by the proposed modification;

g. the record of the public hearing on the proposed modification, including any written testimony or comments received; and

h. documentation that the parish has provided a full opportunity for governmental and public involvement in the development of the proposed modification.

2. Significant alterations or modifications shall be reviewed and approved pursuant to Subsection B, C, and D above. They must be consistent with the guidelines and the state program and meet all pertinent substantive and procedural requirements.

3. An alteration or modification shall become effective when approved by the secretary and officially adopted by the local government. If a proposed alteration or modification is not approved, the provisions of the previously approved program shall remain in effect unless specifically rejected by the governing body of the parish.

F. Periodic Review of Programs

1. Local governments shall submit an annual report on the activities of an approved local program. This annual report shall include:

a. the number, type, and characteristics of applications for coastal use and other permits;

b. the number, type, and characteristics of coastal use and other permits granted, conditioned, denied, and withdrawn

c. the number, type, and characteristics of permits appealed to the courts;

d. results of any appeals;

e. a record of all variances granted;

f. a record of any enforcement actions taken;

g. a description of any problem areas within the state or local program and proposed solutions to any such problems;

h. proposed changes in the state or local program.

2. The administrator shall from time to time, and at least every two years, review the approved local programs to determine the extent to which the implementation of the local program is consistent with and achieving the objectives of the state and local programs.

3. Should the secretary determine that any part of the local program is not consistent with the state program or is not achieving its stated objectives or is not effective, he shall notify the local government and recommend changes and modifications which will assure consistency with, and achievement of, the objectives of the overall coastal program or improve the efficiency and effectiveness of the local program.

4. If the local government fails to give official assurance within one month after receipt of the secretary's notice that it intends to modify the local program in a timely manner to conform to these recommendations, or thereafter fails to make the necessary changes within three months, the secretary may, after public notice, revoke approval of the local program. In such an event the local government shall no longer have the authority to permit uses of local concern or otherwise carry out the functions of an approved program and will lose eligibility to receive management funds other than those funds appropriate and necessary to make the necessary changes. If and when the secretary determines that the local program has been appropriately modified to meet his recommendations pursuant to Subsection B above, he may, after public notice, reinstate approval.

G. Funding of Local Programs

1. All funds provided to local governments by the department for program development or implementation shall

be subject to the following:

a. Any state or federal funds provided to local governments for development or implementation of approved local program shall be by contract with the department. Any such financial assistance shall be subject to these rules and any applicable federal requirements.

b. Such financial assistance shall be on a matching fund basis. The required local match shall be determined by the secretary.

c. Eligibility of a local government for such financial assistance shall be determined by the administrator pursuant to these rules and the contractual requirements of the department.

d. Local programs shall receive an equitable share of the total federal money received by the department from the Office of Coastal Zone Management for Section 306 [of the federal Coastal Zone Management Act, as amended] implementation.

2. Planning and development assistance funding shall be subject to the following:

a. Funding for planning and development of local programs shall be available. The level of such funding shall be at the discretion of the administrator and as provided for herein. A base level of funding will be made available to each parish in the coastal zone which does not have an approved program. Any unutilized allocated funds will be available for by other parishes at the discretion of the administrator for special planning and development projects.

b. To be eligible to continue receiving planning and development assistance, the local government must be making substantial progress toward finalization of an approvable local program.

c. Planning and development funds may only be used to plan for and develop those elements of a local program required by Subsections B and C of these rules and the SLCRMA.

d. Planning and development assistance will be provided by the department for two years from the date of federal approval of the state program or until a parish receives an approved local program, whichever is sooner.

3. The department will make funds available to local governments for costs incurred in applying for approval from the Department, including printing and advertising, holding required public hearings and making copies of the local program available to governmental bodies and the general public.

4. Implementation assistance funding shall be subject to the following:

a. Funding for implementation of a local program shall available after approval of the local program by the department. A local program shall be eligible for such assistance only so long as it continues to be an approved program.

b. The administrator shall establish and modify, as appropriate, a reasonable allocation formula utilizing objective criteria regarding the coastal zone of the parish, including:

i. population;

ii. total surface area;

iii. wetland area;

iv. number of permits; and

v. length of interface between urban and agricultural areas and wetland areas;

c. Each parish with an approved program shall be assured of a base level of funding, with additional funding based upon the allocation formula. Any unutilized implementation funds will be available, at the discretion of the administrator, for use by other parishes for special planning, implementation or management projects.

d. Implementation funds may only be used to implement the approved local program, carry out planning for or development of approvable alterations or modifications in the local program, and to update or revise the data base utilized by the local program.

H. Written Findings. All findings and determinations required by these rules shall be in writing and made part of the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

## Subchapter E. Hearings

### §727. Public Hearings

A. Scope. This regulation is applicable to all public hearings pursuant to the SLCRMA. All such public hearings shall be nonadjudicatory public proceedings conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed action which affords to the public the opportunity to present their views and opinions on such action.

B. Public Notice

1. Public notice shall be given at least 30 days in advance of any public hearings. Notice shall be sent to all persons requesting notices of public hearings and shall be posted in all governmental bodies having an interest in the subject matter of the hearing. Such notice may be limited in area consistent with the nature of the hearing.

2. The notice shall contain the time, place, and nature of hearing; and the location of materials available for public inspection.

C. Time and Place. In fixing the time and place for a hearing, due regard shall be had for the convenience and

necessity of the interested public.

D. Presiding Officer

1. The governmental body holding the hearing shall designate a staff member to serve as presiding officer. In cases of unusual interest the administrator shall have the power to appoint such person as he deems appropriate to serve as the presiding officer.

2. The presiding officer shall establish a hearing file consisting of such material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection.

E. Representation. At the public hearing, any person may appear on his own behalf, or may be represented by counsel or by other representatives.

F. Conduct of Hearings

1. Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the appropriate decision. Written statements may be presented any time prior to the time the hearing file is closed. The presiding officer may afford participants an opportunity for rebuttal.

2. The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of ·nesses, for arguments of parties or their counsel or ·presentatives, and upon the number of rebuttals.

3. Cross-examinations of witnesses shall not be permitted.

4. All public hearings shall be recorded verbatim. Copies of the transcript will be available for public inspection and purchase at the office of the administrator.

5. All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

6. The hearing file shall remain open for a period of 10 days after the close of the public hearing for submission of written comments or other materials. This time period may be extended for good cause.

7. In appropriate cases, joint public hearings may be held with other state, federal, or local agencies, provided the procedures of those hearings are generally consistent with the requirements of this regulation.

8. The procedures in Paragraphs 4 and 6 of this Subsection may be waived by the presiding officer in appropriate cases.

G. Filing of Transcript of the Public Hearing. The ·imony and all evidence received at the public hearing shall be made part of the administrative record of the action. All matters discussed at the public hearing shall be fully considered in arriving at the decision or recommendation. Where a person other than the primary decision making official serves as presiding officer, such person shall submit a report summarizing the testimony and evidence received at the hearing to the primary decision making official for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

## Subchapter F. Special Areas

### §729. Special Areas

A. General. This Section shall establish procedures for the designation, utilization and management of special areas and for establishing guidelines and priorities of uses for each area.

B. Nominations

1. An area may be nominated for designation as a special area by any person, local government, state agency, or the secretary.

2. Areas may be nominated for any of the purposes set forth in §214.27 of the act, or for similar purposes, provided that such areas:

a. are in the coastal zone;

b. have unique and valuable characteristics;

c. require special management procedures different from the normal coastal management process; and

d. are to be managed for a purpose of regional, state, or national importance.

3. Nominations shall consist of:

a. a statement regarding the area nominated, including, for example, its unique and valuable characteristics, its existing uses, the environmental setting, its history, and the surrounding area;

b. a statement of the reasons for the nomination, such as any problems needing correction, anticipated results, need for special management, and need for protection or development;

c. a statement of the social, economic, and environmental impacts of the nomination;

d. a map showing the area nominated;

e. a statement as to why the area nominated was delineated as proposed and not greater or lesser in size or not in another location;

f. proposed guidelines and procedures for management of the area, including priorities of uses;

g. an explanation of how and why the proposed management program would achieve the desired results;

h. a statement as to how and why the designation of area would be consistent with the state coastal management program and any affected local programs; and

i. a statement as to why and how the designation would be in the best interest of the state.

C. Administrative Review

1. The secretary shall review proposals for their suitability and consistency with the coastal management program.

2. If he finds that a proposal is suitable and consistent with the coastal management program, the secretary may, with the advice and assistance of affected local programs, prepare a draft "Proposal for a Special Area. " The proposal shall consist of the delineation of the area to be designated, the guidelines and procedures for management, and priorities of uses.

3. Public notice announcing a public hearing on the proposal shall be given and published in a newspaper of general circulation in the affected parishes. Copies of the proposal may be obtained from the secretary upon request and copies shall be made available for public review at the offices of the secretary, offices of local programs, and at public libraries in affected parishes. Notice and copies of the proposals shall be sent to appropriate governmental bodies.

4. After the public hearing and consideration of all comments received at or before the hearings, the secretary shall determine whether to designate the area proposed, or a part of it or an approximately similar area, and adopt the guidelines and procedures for management and priorities of uses. Public notice of the secretary's decision shall be given.

D. Gubernatorial Establishment. The governor may designate special areas and establish the guidelines and procedures for management and priorities of uses applicable in such areas.

E. Establishment of Special Area. If the state coastal zone program has not yet received federal approval, the special area designation and its management program shall go into effect upon the order of the governor. If the coastal zone program has been federally approved, the special area designation and its management program shall go into effect after federal approval of the special area as an element or amendment of the state's coastal zone program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

# APPENDIX B

# R.S.49:214.21 SUBPART C

C. The secretary may:

(1) Enter into cost sharing agreements with the federal government, with local governments, or with private entities to implement coastal vegetated wetlands conservation and restoration projects.

(2) Acquire by purchase, donation, or otherwise any land needed for wetlands and coastal restoration or conservation projects and other property required for the operation of the projects that are to be owned and operated by the office or political subdivision of the state; provided, that any property acquired for any project shall reserve the minerals to the landowners, whether private or public, in accordance with the provisions of R.S. 31:149.

(3) Develop procedures to evaluate new and improved coastal restoration and preservation technologies.

(4) Perform pre-construction and post-construction monitoring of projects that will be implemented or have been implemented by the office.

(5) Coordinate coastal restoration efforts with local governments, interest groups, and the public.

(6) Develop, implement, operate, maintain, and monitor coastal restoration plans and projects.

(7) Take any other action necessary to administer the program.

(8) Develop guidelines for cost-sharing agreements with public and private entities undertaking approved coastal restoration projects.

Added by Acts 1989, 2nd Ex.Sess., No. 6, § 3, eff. July 14, 1989. Amended by Acts 1990, No. 661, § 1; Acts 1990, No. 936, § 1.

### § 214.5. Legislative oversight

Any rule, regulation, or guideline developed pursuant to this Subpart shall be proposed or adopted pursuant to the rulemaking procedures set forth in the Administrative Procedure Act.

Added by Acts 1989, 2nd Ex.Sess., No. 6, § 3, eff. July 14, 1989.

## SUBPART C. LOUISIANA COASTAL ZONE MANAGEMENT PROGRAM

### § 214.21. Short title

This Subpart shall be known and may be cited as the State and Local Coastal Resources Management Act of 1978.

R.S. 49:213.1. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Redesignated as R.S. 49:214.21 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

### § 214.22. Declaration of public policy

The legislature declares that it is the public policy of the state:

(1) To protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone.

(2)(a) To assure that, to the maximum extent feasible, constitutional and statutory authorities affecting uses of the coastal zone should be included within the Louisiana Coastal Management Program and that guidelines and regulations adopted pursuant thereto shall not be interpreted to allow expansion of governmental authority beyond those laws.

(b) To express certain regulatory and non-regulatory policies for the coastal zone management program. Regulatory policies are to form a basis for administrative decisions to approve or disapprove activities only to the extent that such policies are contained in the statutes of this state or regulations duly adopted and promulgated pursuant thereto. They are to be applicable to each governmental body only to the extent each governmental body has jurisdiction and authority to enforce such policies. Other policies are nonregulatory. They are included in the Coastal Zone Management Plan to help set out priorities in administrative decisions and to inform the public and decision makers of a coherent state framework, but such policies are not binding on private parties.

(3) To support and encourage multiple use of coastal resources consistent with the maintenance and enhancement of renewable resource management and productivity, the need to provide for adequate economic growth and development and the minimization of adverse effects of one resource use upon another, and without imposing any undue restriction on any user.

(4) To employ procedures and practices that resolve conflicts among competing uses within the coastal zone in accordance with the purpose of this Subpart and simplify administrative procedures.

(5) To develop and implement a coastal resources management program which is based on consideration of our resources, the environment, the needs of the people of the state, the nation, and of state and local government.

(6) To enhance opportunities for the use and enjoyment of the recreational values of the coastal zone.

(7) To develop and implement a reasonable and equitable coastal resources management program with sufficient expertise, technical proficiency, and legal authority to enable Louisiana to determine the future course of development and conservation of the coastal zone and to ensure that state and local governments have the primary authority for managing coastal resources.

R.S. 49:213.2. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Redesignated as R.S. 49:214.22 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

### § 214.23. Definitions

(1) "Alternative access" shall mean methods of gaining access, ingress and egress, other than by the dredg-

ing of canals into the wetlands for drilling, servicing, work over, or any other production of minerals activity.

(2) "Alternative access vehicle" shall mean any hover craft, helicopter, air cushion vehicle, or any other vehicle which does not require dredging.

(3) "Coastal waters" shall mean bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).

(4) "Coastal Zone" shall mean the coastal waters and adjacent shorelands within the boundaries of the coastal zone established in R.S. 49:214.24, which are strongly influenced by each other, and in proximity to the shorelines, and uses of which have a direct and significant impact on coastal waters.

(5) "Local government" shall mean the governmental body having general jurisdiction and operating at the parish level.

(6) "Person" shall mean any individual, partnership, association, trust, corporation, public agency or authority, or state or local government body.

(7) "Secretary" shall mean the secretary of the Department of Natural Resources or his designee.

(8) "Use" shall mean any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

(9) "Fastlands" are lands surrounded by publicly owned, maintained, or otherwise validly existing levees, or natural formations, as of the effective date of this Subpart or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.

(10) "Guidelines" means those rules and regulations adopted pursuant to R.S. 49:214.27.

(11) "Public hearing", wherever required in this Subpart, shall mean a hearing announced to the public at least 30 days in advance, and at which all interested persons shall be afforded a reasonable opportunity to submit data, views, or arguments, orally or in writing. At the time of the announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.

(12) "Coastal use permit" shall mean the permits required by R.S. 49:214.30 of this Subpart and shall not mean or refer to, and shall be in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

R.S. 49:213.3. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984; Acts 1987, No. 497, § 1, eff. July 9, 1987. Redesignated as R.S. 49:214.23 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.24. Coastal zone boundary**

A. The seaward boundary of the coastal zone of Louisiana shall be the seaward limit of the state of Louisiana as determined by law.

B. The interstate boundaries of the coastal zone shall be the boundary separating Louisiana from Texas on the west and the boundary separating Louisiana from Mississippi on the east, as each is determined by law.

C. The inland boundary of the coastal zone shall generally be a line beginning at the intersection of the northern line of the Intracoastal Canal and the Louisiana/Texas boundary, thence proceeding easterly along the northern bank of the Intracoastal Canal to Highway 82, thence northeasterly along Highway 82 to Highway 690, thence easterly along Highway 690 to Highway 330, thence northeasterly along Highway 330 to Highway 14, thence easterly along Highway 14 to Highway 90, thence southeasterly along Highway 90 to Highway 85, thence northeasterly along Highway 85 to Highway 90, thence easterly along Highway 90 to the intersection of Highway 90 and the East Atchafalaya Basin Protection Levee thence northerly along the East Atchafalaya Basin Protection Levee to the intersection of the boundary which separates the parishes of St. Martin and Iberia, thence easterly along the boundary separating Iberia Parish from St. Martin Parish, to the intersection of the St. Martin Parish boundary with the boundary separating St. Martin Parish from Assumption Parish, thence southerly along the boundary separating St. Martin Parish from Assumption Parish to the intersection of the boundary with the northern shore of Lake Palourde, thence westerly along the northern shore of Lake Palourde to the intersection of the shore with the northern boundary of the city of Morgan City, thence following the boundary of the corporate limits of the city of Morgan City to where it intersects with the northern bank of the Gulf Intracoastal Waterway, thence along the northern bank of the Gulf Intracoastal Waterway to the vicinity of the Bayou du Large Ridge, thence proceeding southerly along the western edge of the Bayou du Large Ridge to the intersection of the Falgout Canal, thence proceeding easterly along the north bank of the Falgout Canal to the eastern edge of the Bayou du Large Ridge, thence proceeding northerly along the eastern edge of the Bayou du Large Ridge to the vicinity of Crozier, thence proceeding easterly to the western edge of the Grand Caillou Ridge, thence proceeding southerly along the western edge of the Grand Caillou Ridge to the vicinity of

Dulac, thence proceeding easterly to the eastern edge of the Grand Caillou Ridge, thence proceeding northerly along the eastern edge of the Grand Caillou Ridge to the northern bank of the St. Louis Canal, thence proceeding easterly along the northern bank of the St. Louis Canal to the western edge of the Petit Caillou Ridge, thence proceeding southerly along the western edge of the Petit Caillou Ridge to the vicinity of Chauvin, thence proceeding easterly to Highway 55, thence proceeding northerly along Highway 55 to its intersection with Highway 665, thence easterly along Highway 665 to Bayou Pointe au Chien, thence northerly along Bayou Pointe au Chien to Highway 55, thence northerly along Highway 55 to Highway 24, thence easterly along Highway 24 to Highway 308, thence northerly along Highway 308 to a point of intersection with the northern bank of the Gulf Intracoastal Waterway, thence northeasterly along the northern bank of the Gulf Intracoastal Waterway to a point of intersection with Canal Tisamond Foret, thence proceeding northeasterly along the northern bank of the Canal Tisamond Foret to a point of intersection with a line one hundred yards inland from the mean high tide line of Lake Salvador, thence proceeding northerly along the line one hundred yards inland from the mean high tide of Lake Salvador to a point of intersection with a line one hundred yards from the mean high water line of Bayou Des Allemands, thence proceeding northwesterly along the line one hundred yards inland from the western mean high water line of Bayou Des Allemands and the Petit Lac Des Allemands to a point of intersection with the boundary separating Wards 7 and 8 of Lafourche Parish, thence proceeding southwesterly along said boundary to a point of intersection with the Midway Canal, thence proceeding northwesterly along the Midway Canal, and in a northwesterly straight line prolongation of said canal, to a point of intersection with U.S. Highway 90, thence proceeding northeasterly along U.S. Highway 90 to a point of intersection with the line one hundred yards from the western mean high water line of Baie Des Deux Chenes, thence proceeding northwesterly along said line one hundred yards from the western mean high water line of Baie Des Deux Chenes to a point of intersection with the line one hundred yards from the mean high water line of Lac Des Allemands, thence proceeding westerly along said line to a point of intersection with a line one hundred yards from the mean high water line of Bayou Boeuf, thence proceeding southerly along the line of one hundred yards from the mean high water line of Bayou Boeuf to a point of intersection with Highway 307, thence proceeding westerly along Highway 307 to a point of intersection with Highway 20, thence proceeding northerly along Highway 20 to a point of intersection with the boundary separating St. James parish and Lafourche Parish, thence proceeding westerly along said boundary to a point of intersection with the boundary separating St. James Parish and Assumption Parish, thence proceeding northerly along said boundary to a point of intersection with the boundary separating St. James Parish and Ascension Parish, thence proceeding northerly and easterly along said boundary to a point of intersection with the boundary separating Ascension Parish and St. John the Baptist Parish, thence proceeding northerly along said boundary to a point of intersection with the boundary separating Ascension Parish and Livingston Parish, thence proceeding northwesterly along said boundary to a point of intersection with the boundary separating Livingston Parish and East Baton Rouge Parish, thence proceeding northwesterly along said boundary to a point of intersection with Interstate Highway 12 thence, proceeding easterly along Interstate Highway 12 to a point of intersection with Interstate Highway 10, thence proceeding easterly along Interstate Highway 10 to a point of intersection with the boundary separating Louisiana and Mississippi.

D. The secretary shall adopt a fully delineated inland boundary in accordance with the provisions of Subsection C, which boundary shall not depart appreciably from the boundary delineated therein. The secretary shall be authorized to amend the boundary as may be appropriate to follow the corporate limits of any municipality divided by the boundary. The boundary, as adopted, shall be clearly marked on large scale maps or charts, official copies of which shall be available for public inspection in the offices of the coastal management program of the Department of Natural Resources and each local government in the coastal zone.

R.S. 49:213.4. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1979, No. 665, § 1, eff. July 18, 1979; Acts 1980, No. 396, § 1; Acts 1983, No. 705, § 4, eff. Sept. 1, 1983. Redesignated as R.S. 49:214.24 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.25. Types of uses**

A. Uses of the coastal zone subject to the coastal use permitting program shall be of two types:

(1) Uses of state concern: Those uses which directly and significantly affect coastal waters and which are in need of coastal management and which have impacts of greater than local significance or which significantly affect interests of regional, state, or national concern. Uses of state concern shall include, but not be limited to:

(a) Any dredge or fill activity which intersects with more than one water body.

(b) Projects involving use of state owned lands or water bottoms.

(c) State publicly funded projects.

(d) National interest projects.

(e) Projects occurring in more than one parish.

(f) All mineral activities, including exploration for, and production of, oil, gas, and other minerals, all dredge and fill uses associated therewith, and all other associated uses.

(g) All pipelines for the gathering, transportation or transmission of oil, gas and other minerals.

(h) Energy facility siting and development.

(i) Uses of local concern which may significantly affect interests of regional, state or national concern.

(2) Uses of local concern: Those uses which directly and significantly affect coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program. Uses of local concern shall include, but not be limited to:

(a) Privately funded projects which are not uses of state concern.

(b) Publicly funded projects which are not uses of state concern.

(c) Maintenance of uses of local concern.

(d) Jetties or breakwaters.

(e) Dredge or fill projects not intersecting more than one water body.

(f) Bulkheads.

(g) Piers.

(h) Camps and cattlewalks.

(i) Maintenance dredging.

(j) Private water control structures of less than $15,000 in cost.

(k) Uses on cheniers, salt domes, or similar land forms.

B. Subject to the provisions of this Subpart, the delineation of uses of state or local concern shall not be construed to prevent the state or local governments from otherwise regulating or issuing permits for either class of use pursuant to another law.

C. The secretaries of the Departments of Natural Resources and Wildlife and Fisheries are authorized to jointly develop for adoption by the secretary, after notice and public hearing, rules for the further delineation of the types of uses that have a direct and significant impact on coastal waters and that demonstrate a need for coastal management, the classification of uses not listed herein, and for the modification and change of the classifications of uses, provided that no changes shall be made in the classifications of the uses listed in Subsection A.

D. In order for the state to exercise all or part of the federal government's authority for the issuance of permits for discharges of dredged or fill material within the coastal zone, the secretary is authorized to adopt necessary and appropriate rules, consistent with the other provisions of this statute, for the regulation of discharges of dredged or fill material into waters in the coastal zone subject to Section 404 regulation by the Corps of Engineers.

E. When only part of a use lies within the coastal zone, only that portion of the use which is located within the coastal zone is considered a use subject to a coastal use permit under this Subpart.

F. All uses and activities within the coastal zone are permissible, except as subject to the permitting requirements of this Subpart.

R.S. 49:213.5. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983. Redesignated as R.S. 49:214.25 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.26. Coastal management program; administration**

A. (1) A coastal management program is hereby established within the Department of Natural Resources. The secretary or his designee shall administer the coastal management program.

(2) The secretary is authorized to employ such additional staffing as may be necessary to carry out the coastal management program.

B. The secretary may authorize his designee to administer the program and/or:

(1) Receive, evaluate, and make recommendations to the secretary concerning applications for coastal uses permits.

(2) Conduct or cause to be conducted investigations, studies, planning, and research.

(3) Systematically monitor and conduct surveillance of permitted uses to ensure that conditions of coastal use permits are satisfied.

(4) Coordinate closely with the secretary and local, state, regional, and federal agencies with respect to coastal management.

(5) Make recommendations to the secretary relative to appropriate enforcement measures for violations of this Subpart and measures to obtain civil relief, as provided by R.S. 49:214.36(D).

(6) Provide advice and technical assistance to the secretary and local governments.

(7) Conduct such activities or make such decisions as may be delegated or authorized by the secretary.

C. The secretary shall make decisions on applications for coastal use permits and may establish conditions on the granting of coastal use permits.

D. The secretary is further authorized to carry out those duties delegated to his designee by Subsection B of this Section.

R.S. 49:213.6. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984. Redesignated as R.S. 49:214.26 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.27. Coastal management programs; development; guidelines**

A. The secretary shall develop the overall state coastal management program consisting of all applica-

ble constitutional provisions, laws and regulations of this state which affect the coastal zone in accordance with the provisions of this Subpart and shall include within the program such other applicable constitutional or statutory provisions or other regulatory or management programs or activities as may be necessary to achieve the purposes of this Subpart or necessary to implement the guidelines hereinafter set forth.

B. (1) The secretary shall develop a management program and guidelines in conjunction with the secretary of the Department of Wildlife and Fisheries or his designee. Notice of the issuance of the proposed guidelines shall be given to relevant federal, state, and local governmental bodies and the general public, and public hearings shall be held. After consideration of comments received, the secretary shall adopt the guidelines in final form.

(2) The adopted guidelines shall be followed in the development of the state program and local programs and shall serve as criteria for the granting, conditioning, denying, revoking, or modifying of coastal use permits. The secretary, jointly with the secretary of the Department of Wildlife and Fisheries or his designee, shall review the guidelines at least once each year to consider modifications to the guidelines as a result of experience in issuing coastal use permits and results of research and planning activities.

C. The state guidelines shall have the following goals:

(1) To encourage full use of coastal resources while recognizing it is in the public interest of the people of Louisiana to establish a proper balance between development and conservation.

(2) Recognize that some areas of the coastal zone are more suited for development than other areas and hence use guidelines which may differ for the same uses in different areas.

(3) Require careful consideration of the impacts of uses on water flow, circulation, quantity, and quality and require that the discharge or release of any pollutant or toxic material into the water or air of the coastal zone be within all applicable limits established by law, or by federal, state, or local regulatory authority.

(4) Recognize the value of special features of the coastal zone such as barrier islands, fishery nursery grounds, recreation areas, ports and other areas where developments and facilities are dependent upon the utilization of or access to coastal waters, and areas particularly suited for industrial, commercial, or residential development and manage those areas so as to enhance their value to the people of Louisiana.

(5) Minimize, whenever feasible and practical, detrimental impacts on natural areas and wildlife habitat and fisheries by such means as encouraging minimum change of natural systems and by multiple use of existing canals, directional drilling, and other practical techniques.

(6) Provide for adequate corridors within the coastal zone for transportation, industrialization, or urbanization and encouraging the location of such corridors in already developed or disturbed areas when feasible or practicable.

(7) Reduce governmental red tape and costly delays and ensure more predictable decisions on permit applications.

(8) Encourage such multiple uses of the coastal zone as are consistent with the purposes of this Subpart.

(9) Minimize detrimental effects of foreseeable cumulative impacts on coastal resources from proposed or authorized uses.

(10) Provide ways to enhance opportunities for the use and enjoyment of the recreational values of the coastal zone.

(11) Require the consideration of available scientific understanding of natural systems, available engineering technology and economics in the development of management programs.

(12) Establish procedures and criteria to ensure that appropriate consideration is given to uses of regional, state, or national importance, energy facility siting and the national interests in coastal resources.

D. (1) In the development and implementation of the overall coastal management program, the secretary shall conduct a public education program to inform the people of the state of the provisions of this Subpart and the rules and regulations adopted pursuant hereto, and participation and comments by federal, state, and local governmental bodies, including port authorities, levee boards, regional organizations, planning bodies, municipalities and public corporations, and the general public shall be invited and encouraged.

(2) All governmental bodies may participate to ensure that their interests are fully considered.

E. (1) The secretary shall issue a request for proposals to all major manufacturers of alternative access vehicles and all major oil producers, and shall accept from any interested party proposals to physically demonstrate methods which are technically and economically feasible as well as environmentally sound to gain alternative access to the wetlands for the purpose of oil and gas operations in lieu of the need for dredging.

(2) The secretary shall complete the demonstration project at no cost to the state and report his findings on the technical and economic feasibility of alternative access to the committees on natural resources of the Senate and House of Representatives by March 1, 1988.

R.S. 49:213.8. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984; Acts 1987, No. 497, § 1, eff. July 9, 1987. Redesignated as R.S. 49:214.27 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989; Acts 1991, No. 640, § 1.

**§ 214.28. Local coastal management programs**

A. Local governments may develop local coastal management programs in accordance with the provisions of this Section.

B. The secretary shall adopt, after notice and public hearing, rules and procedures for the development, approval, modification, and periodic review of local coastal management programs. Such rules and procedures may subsequently be amended by the secretary.

C. The rules and procedures adopted pursuant to this Section shall be consistent with the state guidelines and shall provide particularly, but not exclusively, that:

(1) Local governments, in developing local programs, shall afford full opportunity for municipalities, state and local government bodies, and the general public to participate in the development and implementation of the local program.

(2) A public hearing to receive comments on a proposed local program shall be held in the area to be subject to the program by the local government proposing the program or its duly appointed local committee.

(3) A local program developed under this Section shall be consistent with the state guidelines and with the policies and objectives of this Subpart and shall particularly, but not exclusively, consist of:

(a) A description of the natural resources and the natural resource users of the coastal zone area within the parish, the social and economic needs within particular areas of the coastal zone of the parish, and the general order or priority in which those needs which directly and significantly affect coastal waters should be met within the coastal zone of the parish.

(b) Procedures to be used by the local government to regulate uses of local concern.

(c) Special procedures and methods for considering uses within special areas, uses of greater than local benefit, and uses affecting the state and national interest.

(4) Each local government preparing a local program under this Section may appoint a coastal advisory committee, hereinafter called "local committee". The local committee shall be composed of a reasonable number of persons who represent users of coastal resources and shall include representation of users concerned with conservation and preservation of renewable coastal resources and users concerned with development of resources for commercial purposes. The local committee shall assist local government in the development and implementation of a local program and in the development of special management programs affecting special areas. The local committee may report progress or problems in the implementation of the state and local programs and may convey ideas and suggestions to the local governments and the secretary.

(5) Local programs shall be submitted to the secretary for review and may be submitted after promulgation of the state guidelines and the rules adopted pursuant to this Section.

D. In approving a local program, the secretary, acting jointly with the secretary of the Department of Wildlife and Fisheries or his designee, may make reasonable interpretations of the state guidelines insofar as they affect that particular local program, which are necessary because of local environmental conditions or user practices. The secretary may otherwise provide for the requirements for approval of local programs.

E. Within ninety days after receipt of a proposed local program, the secretary shall either approve the program or notify the local government of the specific changes which must be made in order for it to be approved. Before making his decision the secretary shall consider each proposed local program, the comments received from other agencies, interested persons and the public hearing, the state guidelines and the rules adopted pursuant to this Section. A local program may be resubmitted, or amended following the same procedures outlined herein.

F. A local government or any other persons adversely affected by a decision of the secretary pursuant to R.S. 49:214.28(E) may appeal the decision in accordance with R.S. 49:214.35.

G. No local coastal program shall become effective until it has been approved by the secretary. Once approved, a local program shall be available for public inspection at the offices of the local government and of the coastal management program.

H. Once a local program is approved by the secretary:

(1) Uses of local concern within the parish's coastal zone must be consistent with the local program and shall be subject to the issuance of coastal use permits by the local government.

(2) The local program may be altered or modified only with approval of the secretary pursuant to the procedures provided for approval of local program.

(3) The local program, its procedures and implementation shall be subject to periodic review by the secretary to ensure continued consistency with the state program, guidelines, and with the policies and purpose of this Subpart. The secretary shall require the modification of the local program or its procedures when necessary to ensure such consistency pursuant to the procedures provided for approval of a local program.

I. The secretary is authorized to enter into contracts with local governments to provide financial assistance on a matching fund basis to aid the development and implementation of approved local programs under this Subpart. The secretary shall develop rules and procedures after notice and public hearing, under

which local governments may qualify for such assistance.

R.S. 49:213.9. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1979, No. 613, § 1, eff. July 18, 1979; Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984. Redesignated as R.S. 49:214.28 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.29. Special areas, projects, and programs**

A. Special areas are areas within the coastal zone which have unique and valuable characteristics requiring special management procedures. Special areas may include important geological formations, such as beaches, barrier islands, shell deposits, salt domes, or formations containing deposits of oil, gas or other minerals; historical or archaeological sites; corridors for transportation, industrialization or urbanization; areas subject to flooding, subsidence, salt water intrusion or the like; unique, scarce, fragile, vulnerable, highly productive or essential habitat for living resources; ports or other developments or facilities dependent upon access to water; recreational areas; freshwater storage areas; and such other areas as may be determined pursuant to this Section.

B. The secretary shall adopt, after notice and public hearing, rules for the identification, designation, and utilization of special areas and for the establishing of guidelines or priorities of uses in each area.

C. Those areas and facilities subject to the jurisdiction of the Offshore Terminal Authority are deemed to be special areas. The environmental protection plan required by R.S. 34:3113 shall constitute the management guidelines for this special area and shall continue to be administered and enforced by the Offshore Terminal Authority or its successor in accordance with the policies and objectives of the state program.

D. The secretary shall have the authority to set priorities, consistent with this Subpart, for funding available under Section 308 of the Federal Coastal Zone Management Act (PL 92-583 as amended by PL 94-370).[1]

E. The secretary is authorized to assist approved local programs and state and local agencies carrying out projects consistent with the guidelines, related to the management, development, preservation, or restoration of specific sites in the coastal zone or to the development of greater use and enjoyment of the resources of the coastal zone by financial, technical, or other means, including aid in obtaining federal funds.

F. Notwithstanding any law, order, or regulation to the contrary, the secretary shall prepare a freshwater diversion plan for the state in order to reserve or offset land loss and salt water encroachment in Louisiana's coastal wetlands. As part of this plan the secretary shall prepare specific recommendations as to those locations which are most in need of freshwater diverted from the Mississippi River and other water bodies of the state, and he shall include the projected costs thereof and the order of priority.

G. The secretary shall develop an indexing system whereby those wetland, coastline, and barrier island areas which are undergoing rapid change or are otherwise considered critical shall be identified; and the secretary shall also undertake a pilot program to create one or more artificial barrier islands in order to determine the effectiveness of such islands in controlling shoreline erosion.

H. The governor may, upon recommendation by the secretary and after consultation with the attorney general as to any adverse impact on the coastline, enter into agreements with the United States regarding the construction, maintenance, and operation of projects along the coastline and in the Gulf of Mexico. The agreements may provide that such projects shall not affect the location of the shoreline or boundaries of the state.

R.S. 49:213.10. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1978, No. 777, § 1; Acts 1979, No. 561, § 1; Acts 1979, No. 574, § 1; Acts 1979, No. 613, § 1, eff. July 18, 1979; Acts 1983, No. 591, § 2, eff. July 14, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984. Redesignated as R.S. 49:214.29 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

[1] 16 U.S.C.A. § 1451 et seq.

**§ 214.30. Coastal use permits**

A. No person shall commence a use of state or local concern without first applying for and receiving a coastal use permit. Decisions on coastal use permit applications shall be made by the secretary, except that the local government shall make coastal use permit decisions as to uses of local concern in areas where an approved local program is in effect. Conditions set forth in a coastal use permit shall supersede any and all variances or exceptions granted by the commissioner of conservation in accordance with R.S. 30:4(E)(1) for activities within the coastal zone as defined by R.S. 49:214.24.

B. Within one hundred twenty days after the effective date of this Subpart, the secretary shall adopt, after notice and public hearing, rules and procedures consistent with this Subpart for both the state coastal management program and approved local programs regarding the form and information requirements for coastal use permit applications, the coastal use permit review process, public notice and public comments, criteria and guidelines for decision making, appeals and emergency activities.

C. The rules promulgated pursuant to this Section shall, among other things, provide that:

(1) Coastal use permit applications shall be submitted to the secretary, except that applications for uses in areas subject to an approved local program may instead be submitted to the local government. Local governments with an approved program to whom applications are submitted shall make the initial determi-

nation, subject to review by the secretary with a right of appeal, as to whether the proposed use is of state concern or local concern. Copies of all applications submitted to local governments and the local government's use-type determination shall be transmitted to the secretary within two days of receipt.

(2)(a) Within ten days of receipt of a coastal use permit application by the secretary, copies of the application shall be distributed to the local government or governments in whose parish the use is to occur and all appropriate state and local agencies, and public notice shall be given. A public hearing on an application may be held. 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. The landowner and his address shall be determined by rules of the administrator. The applicant shall make every reasonable effort, which shall include a search of the public records of the parish in which the use is to occur if necessary, to determine the identity and current address of the owner or owners of the land on which the use is to occur. The application shall not be considered complete unless the applicant attaches thereto a written affidavit of the fact that reasonable efforts have been made to determine the identity and present address of each owner and a list of the names and addresses of the owners to whom the applicant has furnished a copy of the application.

(b) Notwithstanding any other law to the contrary, the secretary shall, after notification by the department to the applicant that the application is complete, grant or deny all applications for all permits, licenses, registrations, variances, or compliance schedules within sixty days. The notification of completeness shall be issued within fourteen days, exclusive of holidays, by the department. If the application is not complete, the department shall notify the applicant in writing of the deficiencies which cause the application not to be complete. If the secretary does not grant the application, he shall provide written reasons for his decision, and copies of the decision shall be provided to all parties. The secretary may delegate the power to grant permits, licenses, registrations, variances, or compliance schedules to an assistant secretary.

(c) If the secretary does not grant or deny the application within the time period provided for herein, the applicant may file a rule as provided for in R.S. 49:962.1.

(3) The decision to approve, approve with modifications, or otherwise condition approval, or deny the coastal use permit shall be made within thirty days after public notice or within fifteen days after a public hearing, whichever is later. The coastal use permit decision must be consistent with the state program and approved local programs for affected parishes and must represent an appropriate balancing of social, environmental and economic factors. In all instances local government comments shall be given substantial consideration.

(4) The decision to approve, approve with modifications, or otherwise condition approval, or deny the application for a coastal use permit shall be in writing and copies of the decisions shall be sent to all parties.

(5) Public notice of coastal use permit decisions shall be given.

(6) The secretary may adopt rules providing for alternate procedures for the filing of applications, distribution of copies, giving of notices, and public hearings in order to implement the coordinated coastal permitting process established pursuant to R.S. 49:214.-33.

(7) Notwithstanding any contrary provisions of law in this Section, the permitting authority shall deny the application for a coastal use permit if the applicant fails to respond within sixty days to any request or inquiry from the permitting authority.

(8) Notwithstanding any contrary provision of law or regulation, a coastal use permit, once granted on private continuing marsh management projects, shall be valid for the life of the project or activity for which the permit is issued, unless the secretary shall thereafter modify, revoke, or suspend the permit. Unless the secretary revokes or suspends the permit, no further permits shall be necessary for activities required to operate or maintain the permitted use.

D. The applicant, the secretary, and affected local government or affected federal, state, or local agency, any aggrieved person, or any other person adversely affected by a coastal use permit decision may appeal the coastal use permit decision in accordance with R.S. 49:214.35.

E. The secretary is authorized to adopt rules and procedures for the issuance of general coastal use permits and for the issuance of variances from the normal coastal use permitting requirements. For the purposes of this Subpart, a general coastal use permit is an authorization to prospective users to perform specific uses within prescribed areas of the coastal zone without the necessity for a complete, independent review of each proposed use and allows the shortest time period of review possible. The rules and procedures which may be adopted pursuant to this Section shall provide for expeditious processing of applications for general coastal use permits and may authorize variances from the normal coastal use permit application and review procedures. General coastal use permits and variances from the normal coastal use permitting requirements may not be issued except when the issuance of such general coastal use permits or variances does not impair the fulfillment of the objectives and policies of the Subpart.

F. The secretary shall adopt rules whereby specified types of activities may be carried out under prescribed emergency conditions without the necessity of obtaining a coastal use permit in advance.

G. The secretary is authorized to establish a reasonable schedule for fees to be charged to the applicant for the processing and evaluation of coastal use permit applications. The secretary shall waive fees authorized by this Section for any individual, state agency, or political subdivision deemed by him to be engaged in coastal restoration activity consistent with the plan as provided in R.S. 49:213.6 and for local public bodies for constructing drainage improvements. Funds generated from these fees shall be deposited in the Coastal Resources Trust Fund as provided in R.S. 49:214.40.

H. (1) In order for the state to fulfill its obligation under the public policy provisions of this Subpart, the secretary shall insure that whenever a proposed use or activity requires the dredging or disposal of five hundred thousand cubic yards or more of any waterbottom or wetland within the coastal zone, the dredged material shall be used for the beneficial purposes of wetland protection, creation, enhancement, or combinations thereof, in accordance with a long term management strategies plan for each existing or proposed channel or canal as approved by the secretary.

(2) When a proposed use or activity involves dredging to construct or maintain a channel or canal greater than one mile in length in the coastal zone and where the secretary determines that failure to maintain and stabilize the banks of such channel or canal will result in direct or indirect loss of wetlands or adverse impacts to wetlands or waterbottoms, the secretary shall require that such banks be maintained and stabilized using dredged materials or structural stabilization measures, or both. In areas where the secretary determines that dredged material placement alone is insufficient to maintain and stabilize the banks along all or part of the canal or channel, the use of structural stabilization measures, including, but not limited to rock breakwaters, shall also be required. Any dredged material disposal and channel bank stabilization shall be in accordance with a long term management strategies plan for each existing or proposed channel or canal as approved by the secretary. At a minimum, the plan shall address environmental and economic considerations and emergency situations.

R.S. 49:213.11. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 512, § 1; Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984; Acts 1986, No. 954, § 1, eff. July 14, 1986; Acts 1987, No. 558, § 1; Acts 1989, 2nd Ex.Sess., No. 6, § 4, eff. July 14, 1989. Redesignated as R.S. 49:214.30 by Acts 1989, 2nd Ex.Sess., No. 6, § 7. Amended by Acts 1990, No. 98, § 1; Acts 1990, No. 662, § 1, eff. July 19, 1990; Acts 1990, No. 996, § 2; Acts 1991, No. 637, § 1; Acts 1991, No. 828, § 2; Acts 1991, No. 995, § 1; Acts 1992, No. 815, § 2; Acts 1993, No. 194, § 2; Acts 1993, No. 970, § 1.

**Date Effective**

*R.S. 49:214.39 states that: "This part shall become effective on January 1, 1979, except that the coastal use permit program established pursuant to R.S. 49:214.30 shall not commence until thirty days after the adoption of guidelines pursuant to R.S. 49:214.27."*

### § 214.31. Existing authority of certain state departments and local governments retained

A. Nothing in this Subpart shall abridge the constitutional authority of any department of state government or any agency or office situated within a department of state government. Nor shall any provision, except as clearly expressed herein, repeal the statutory authority of any department of state government or any agency or office situated in a department of state government.

B. Permits issued pursuant to existing statutory authority of the office of conservation in the Department of Natural Resources for the location, drilling, exploration and production of oil, gas, sulphur or other minerals shall be issued in lieu of coastal use permits, provided that the office of conservation shall coordinate such permitting actions pursuant to R.S. 49:214.-32(B) and (D) and shall ensure that all activities so permitted are consistent with the guidelines, the state program and any affected local program.

C. Permits issued pursuant to existing statutory authority by the Department of Wildlife and Fisheries for the leasing, seeding, cultivation, planting, harvesting or marking of oyster bedding grounds shall be issued in lieu of coastal use permits, provided that the Department of Wildlife and Fisheries shall coordinate such permitting actions pursuant to R.S. 49:214.32(B) and (D) and shall ensure that all activities so permitted are consistent with the guidelines, the state program and any affected local program.

D. The provisions of this Subpart are not intended to abridge the constitutional authority of any local governments, levee boards or other political subdivisions.

R.S. 49:213.12. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Redesignated as R.S. 49:214.31 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

### § 214.32. Intergovernmental coordination and consistency

A. Deep water port commissions and deep water port, harbor, and terminal districts, as defined in Article 6, Sections 43 and 44 of the Louisiana Constitution of 1974, shall not be required to obtain coastal use permits. Provided, however, that their activities shall be consistent to the maximum extent practicable with the state program and affected approved local programs.

B. Any governmental body undertaking, conducting, or supporting activities directly affecting the coastal zone shall ensure that such activities shall be consistent to the maximum extent practicable with the state

program and any affected approved local program having geographical jurisdiction over the action.

C. (1) Consistency determinations shall be made by the secretary except that consistency determinations for uses carried out under the secretary's authority shall be made by the governor.

(2) The following schedule of fees shall be charged for the processing and evaluation of consistency determinations required by R.S. 49:214.32 to the person conducting an activity subject to consistency review. A nonrefundable processing fee of three hundred dollars shall accompany each application or request for consistency determination submitted to the Coastal Management Division.

(3) The schedule of fees shall become effective October 1, 1992.

(4) If the appropriate application fees are not included along with the application or request for consistency determination, the application or request shall be considered incomplete, and returned to the applicant.

(5) The following activities are exempted from consistency fees:

(a) The processing and evaluation of any consistency determinations relative to all matters concerning the Oil Spill Prevention and Response Act (R.S. 30:2451 et seq.) and any amendments thereto.

(b) The processing and evaluation of consistency determinations for activities performed by the Louisiana Department of Wildlife and Fisheries on wildlife management areas and refuges maintained or managed by the Department of Wildlife and Fisheries.

(c) The processing and evaluation of consistency determinations for activities performed by the Louisiana Department of Recreation and Tourism on state parks and cultural sites maintained and/or managed by the Louisiana Department of Recreation and Tourism.

(d) The processing and evaluation of consistency determinations for any portions of federally permitted activities which are also subject to the state coastal use permitting requirement.

(e) The processing and evaluation of consistency determinations for federal loans and grants.

(f) The processing and evaluation of consistency determinations for activities performed by the U.S. Fish and Wildlife Service on refuges maintained and/or managed by the U.S. Fish and Wildlife Service.

(g) The processing and evaluation of consistency determinations for activities performed by the U.S. Park Service in national parks.

(h) The processing and evaluation of consistency determinations for maintenance of existing Outer Continental Shelf mineral facilities, pipelines, and other structures.

(i) The processing and evaluation of consistency determinations for relocation and removal of existing Outer Continental Shelf mineral facilities, pipelines, and other structures when such relocation or removal is required by federal or state statute or regulation.

(6) The monies generated from the collection of consistency determination fees shall be allocated and expended to employ sufficient personnel to process and evaluate consistency determinations in an expeditious manner.

(7) Decisions on consistency determinations shall be made within three months of receipt of the consistency determination by the Coastal Management Division, except as provided by federal regulations at 15 CFR 930.79 and 15 CFR 930.63.

D. Governmental bodies shall fully coordinate their activities directly affecting the coastal zone with the state program and affected approved local programs. When the secretary finds that governmental actions not subject to the coastal use permitting program may significantly affect land and water resources within the coastal zone, he shall notify the secretary of the Department of Wildlife and Fisheries or his designee and the concerned governmental body carrying out the action. Any governmental body so notified shall coordinate fully with the secretaries or their designees, acting jointly, at the earliest possible stage of the proposed action. The secretaries or their designees, shall make comments to such other agencies in order to assure that such actions are consistent with the state program and affected local programs. These comments shall, to the maximum extent practicable, be incorporated into the action commented upon.

E. Provided that neither the state nor any local government having an approved local program shall be liable for any damages resulting from activities occurring in connection with the granting of any coastal use permit pursuant to this Section; and provided further that any person undertaking any use within the coastal zone in accordance with the terms and conditions of a coastal use permit issued pursuant to this Section shall be considered in full compliance with the purposes and provisions of this Subpart.

F. (1) In order for the state to fulfill its obligation under the public policy provisions of this Subpart, the secretary shall insure that whenever a proposed use or activity requires the dredging or disposal of five hundred thousand cubic yards or more of any waterbottom or wetland within the coastal zone, the dredged material shall be used for the beneficial purposes of wetland protection, creation, enhancement, or combinations thereof, in accordance with a long term management strategies plan for each existing or proposed channel as developed by the secretary and adopted pursuant to the provisions of the Louisiana Administrative Procedure Act.[1]

(2) When a proposed use or activity involves dredging to construct or maintain a channel or canal greater than one mile in length in the coastal zone and where the secretary determines that failure to maintain and stabilize the banks of such channel or canal will result in direct or indirect loss of wetlands or adverse impacts

to wetlands or waterbottoms, the secretary shall require that such banks be maintained and stabilized using dredged materials or structural stabilization measures, or both. In areas where the secretary determines that dredged material placement alone is insufficient to maintain and stabilize the banks along all or part of the canal or channel, the use of structural stabilization measures, including, but not limited to rock breakwaters, shall also be required. Any dredged material disposal and channel bank stabilization shall be in accordance with a long term management strategies plan for each proposed or existing channel as developed by the secretary and adopted pursuant to the provisions of the Louisiana Administrative Procedure Act.

(3) In developing a long term management strategies plan for each existing or proposed channel as provided in Paragraphs F(1) and (2), the secretary shall consult with and address the concerns of the following:

(a) The local sponsor of the existing or proposed channel.

(b) The governing authority for the parish in the coastal zone through which the channel is to be constructed or maintained.

(c) Representatives of the affected or potentially affected port or waterway facility operators.

(d) Representatives of the affected or potentially affected waterway user groups.

(e) Appropriate state and federal agencies.

(4) The plan shall address beneficial use of dredged material disposal for the purposes of wetland protection, creation, enhancement, combinations thereof, and channel bank stabilization, where deemed appropriate by the secretary from a long-range perspective and shall incorporate structural, management, institutional, and economic components for a particular existing or proposed navigation channel. The plan shall include but not be limited to the following:

(a) A list of projects, programs, or structural channel bank stabilization measures required for the conservation, restoration, or creation of wetlands lost, adversely affected, or with the potential to be lost as a result of existing or proposed navigation channels and the action required of each state or federal agency, port authority, user group, or other responsible party to implement said project, program, or channel bank stabilization measure.

(b) A schedule, estimated cost, and source or sources of funding for the implementation of each project, program, or channel bank stabilization measure included in the plan for a particular existing or proposed navigation channel.

(c) Scientific data and other reasons, including but not limited to economic, social, geographic, and biological considerations and parameters as to why each project, program, or structural measure was selected for inclusion. Specifically this will include an explanation as to how each project, program, or channel bank stabilization measure advances the plan's objectives with respect to beneficial use of dredged material disposal for the purposes of wetland protection, creation, enhancement, a combination thereof, and channel bank stabilization, where deemed appropriate by the secretary.

(d) Provisions which address emergency situations, including but not limited to instances of force majeure, acts of God, acts of war, and other problems or situations not anticipated in the plan.

(5) Any plan approved by the secretary and adopted in accordance with the Louisiana Administrative Procedure Act shall be consistent with the provisions of R.S. 49:214.27 and 214.32, and the rules, regulations, and guidelines adopted thereunder. Any project, program, or structural channel bank stabilization measures included in an approved and promulgated plan for a particular existing or proposed navigation channel shall be deemed to be consistent with the Louisiana Coastal Resources Program, provided, however, actual construction and implementation is done in accordance with the plan, design memorandum, local cooperation agreement, and local cooperation agreement for a particular existing or proposed navigation channel. Consistency determinations for projects, programs or channel bank stabilization measures implemented or constructed on a channel or canal, or any segment thereof, which has not been made part of any plan approved and adopted pursuant to the provisions herein shall be made on a case-by-case basis in accordance with R.S. 49:214.27 and 214.32 and the rules, regulations and guidelines adopted thereunder. The provisions herein shall be made on a case-by-case basis in accordance with R.S. 49:214.27 and the rules, regulations, and guidelines adopted thereunder.

(6)(a) Any long term management strategies plan shall have, as a matter of law a term of not more than ten years. At the end of the term, the secretary may, in accordance with applicable statutory law, rules, and regulations:

(i) Extend or reissue a plan for another term of up to ten years.

(ii) Require a modification to incorporate terms and conditions deemed necessary for the wetland protection, conservation, restoration, enhancement, creation, any combination thereof, and channel bank stabilization, or to reflect regulatory changes which have been specified by rule or regulation.

(b) The secretary may not revoke the consistency determination for any provision of a plan approved and adopted pursuant to the provisions herein unless notice is given to the sponsor assuring agency not less than one calendar year prior to the revocation. Upon such notice, the secretary shall consult with and respond in writing to the concerns of the local sponsor of the existing or proposed channel, the governing authority for the parish in the coastal zone through which the channel is constructed or maintained, representatives of the affected or potentially affected port or waterway

facility operators, representatives of the affected waterway user groups, and appropriate state and federal agencies.

(c) At the end of the term of any plan, the provisions of this Subsection shall apply to any request for an extension or renewal. No plan shall be terminated pursuant to this Section if the secretary has taken no action to extend, modify, or revoke the grant of authority. The grant of authority shall remain until such action is taken.

(7) Until a long term management strategies plan is adopted for a particular proposed or existing channel, the secretary shall continue to act in accordance with the provisions of R.S. 49:214.27 and 214.32 and the rules, regulations, and guidelines adopted thereunder in determining whether channel construction, maintenance, and associated dredged material disposal is consistent with Louisiana's Coastal Management Program.

(8)(a) The secretary may grant variances for consistency determinations for any project, program, or structural channel bank stabilization measure for which no funds are available to construct or implement same from the funding sources identified in a plan approved and adopted in accordance with this Section. Such variances may be granted upon presentation of reasonable evidence that compliance with the provisions of a plan will result in significant economic losses to any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the people of the state.

(b) In determining under what conditions and to what extent a variance from a plan approved and adopted pursuant to the provisions of the Section is granted, the secretary shall give due consideration to progress which the person, entity, sponsor, assuring agency, or state or federal agency requesting the variance shall have made in complying with and implementing a plan, the efforts made by the person, entity, sponsor, assuring agency, or state or federal agency requesting the variance to acquire adequate funding from the funding sources identified in a particular plan, and the degree and nature of the adverse ecological impacts caused by the failure to implement the project, program, or structural channel bank stabilization measure for which the variance is requested.

(c) The secretary may grant such variance which shall be conditioned to require the inclusion of the particular project, program, or channel bank stabilization measure, for which the variance is granted in the subsequent dredging cycle for that particular channel, and upon the requirement to provide a level of compensatory mitigation in accordance with the provisions of R.S. 49:214.41 for the ecological impacts resulting from the failure to implement the project, program, or structural channel bank stabilization measure for which the variance is granted. Any variance granted pursuant to the provisions of this Section shall be granted for a period of time not to exceed two years, as shall be specified by the secretary. Any variance which may be granted shall be under the condition that the sponsor or assuring agency shall make such periodic reports to the secretary as to the progress made toward acquiring adequate funding. Upon failure of the secretary to take action within sixty days after receipt of a request for a variance, or upon failure of the secretary to enter a final order or determination within sixty days after final argument in any hearing under this Subpart, then for all purposes the person, entity, sponsor, assuring agency, or state or federal agency affected shall be entitled to treat such failure to act as a grant of the variance or of a finding favorable to the party requesting the variance.

R.S. 49:213.13. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983. Redesignated as R.S. 49:214.32 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989. Amended by Acts 1991, No. 637, § 1; Acts 1992, No. 1075, § 1.

[1] In par. F(1), R.S. 49:950 et seq.

### § 214.33. Coordinated coastal permitting process

A. This Section is intended to expedite and streamline the processing of issuing coastal use permits and of obtaining all other concurrently required permits or approvals from other governmental bodies having separate regulatory jurisdiction or authority over uses of the coastal zone without impinging on the regulatory jurisdiction or authority of such other governmental bodies.

B. To implement this intent, within one year of the effective date of this Subpart, the secretary, local governments, and all other relevant governmental bodies having such other regulatory jurisdiction or authority over uses of the coastal zone shall in cooperation with one another and under the direction of the governor establish a coordinated coastal permitting process by means of binding interagency agreements wherein:

(1) One application form serves as the application form for all required permits or approvals from all governmental bodies taking part in the coordinated coastal permitting process.

(2) The application contains sufficient information so that all necessary reviews by all affected governmental bodies can be expeditiously carried out.

(3) A "one window" system for applications is established, with copies of the application being transmitted to all governmental bodies taking part in the coordinated coastal permitting process.

(4) Only one public hearing, if any, need be held on the application. Any public hearing held shall be deemed to serve for all governmental bodies taking part in the coordinated coastal permitting process.

(5) The shortest practicable period for review of applications by all governmental bodies taking part in the coordinated coastal permitting process insofar as the application pertains to the regulatory jurisdiction or authority of such governmental body, is provided for.

(6) The coordinated coastal permitting process shall not affect the powers, duties, or functions of any governmental body particularly the Department of Wildlife and Fisheries and the Office of Conservation in the Department of Natural Resources.

(7) If practicable, a joint permitting process with federal agencies issuing permits shall be established incorporating the coordinated coastal permitting process. Nor shall any other permit review or approval that, in the discretion of the secretary, would be inappropriate for inclusion in a unified permit.

C. Provided that local zoning, subdivision, building, health, and other similar permits, reviewing, or approvals which are not part of an approved local program shall not be included within the unified permitting program; nor shall any other permit review or approval which, in the discretion of the secretary, would be inappropriate for inclusion in a unified permit.

D. Prior to the implementation of the unified coastal permitting program, the secretary is authorized to develop interim interagency agreements with the respective governmental bodies to coordinate permit handling, decision making, and appeal procedures.

E. After such process is established as provided in this Section, the secretary shall administer and implement and may modify such process in accordance with the provisions of this Section.

R.S. 49:213.14. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983. Redesignated as R.S. 49:214.33 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.34. Activities not requiring a coastal use permit**

A. The following activities shall not require a coastal use permit.

(1) Activities occurring wholly on lands five feet above mean sea level except when the secretary finds, subject to appeal, that the particular activity would have direct and significant impact on coastal waters.

(2) Activities occurring within fast lands except when the secretary finds, subject to appeal, that the particular activity would have direct and significant impacts on coastal waters.

(3) Agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities.

(4) Hunting, fishing, trapping, and the preservation of scenic, historic, and scientific areas and wildlife preserves.

(5) Normal maintenance or repair of existing structures including emergency repairs of damage caused by accident, fire, or the elements.

(6) Uses and activities within the special area established in R.S. 49:214.29(C) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan.

(7) Construction of a residence or camp.

(8) Construction and modification of navigational aids such as channel markers and anchor buoys.

(9) Construction, maintenance, repair, or normal use of any dwelling, apartment complex, hotel, motel, restaurant, service station, garage, repair shop, school, hospital, church, office building, store, amusement park, sign, driveway, sidewalk, parking lot, fence, or utility pole or line, when these activities occur wholly on lands five feet or more above mean sea level or on fast lands except when the secretary finds, subject to appeal, that the particular activity would have direct and significant impacts on coastal waters.

(10) Uses which do not have a significant impact on coastal waters.

B. (1) The secretary shall adopt rules for the implementation of this Section and may, by such rules, specify such other activities not requiring a coastal use permit as are consistent with the purposes of this Subpart.

(2) Nothing in this Subsection shall be construed as otherwise abrogating the lawful authority of agencies and local governments to adopt zoning laws, ordinances, or rules and regulations for those activities within the coastal zone not requiring a coastal use permit and to issue licenses and permits pursuant thereto. Individual specific uses legally commenced or established prior to the effective date of the coastal use permit program shall not require a coastal use permit.

R.S. 49:213.15. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984. Redesignated as R.S. 49:214.34 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.35. Reconsiderations, judicial review**

A. This Section shall govern the reconsideration and/or judicial review of actions of the secretary under this Subpart, including coastal use permit and local program approval decisions and determinations of state or local concern under R.S. 49:214.30(C)(1) and determinations of direct and significant impact under R.S. 49:214.34.

B. A decision or determination shall be subject to reconsideration by the secretary if a petition for reconsideration is filed in writing with the secretary within ten days following public notice of a final coastal use permit or local program approval decision, or receipt of written notice of a determination made under R.S. 49:214.30(C)(1) or R.S. 49:214.34. The grounds for reconsideration shall be either that:

(1) The decision or determination is clearly contrary to the law or the evidence before the secretary;

(2) The petitioner has discovered, since the decision or determination, evidence important to the issues which he could not, with due diligence, have presented to the secretary prior to the decision;

(3) There is a showing that issues not previously considered, through no fault of the petitioner, ought to be examined in order to properly dispose of the matter; or

(4) There exist other good grounds for further consideration of the issues and the evidence in the public interest.

C. The petition for reconsideration shall set forth the grounds which justify such action. Nothing in this Section shall prevent the reopening or reconsideration of a decision or determination in accordance with other applicable statutory provisions or at any time on the grounds of fraud, perjured testimony, or fictitious evidence. The reconsideration shall be limited to those grounds upon which it was granted, and the secretary may adopt regulations for the orderly consideration and disposition of reconsideration petitions. The secretary shall render a decision upon the reconsideration petition within fifteen days of its receipt. If a petition for reconsideration is timely filed, the period within which judicial review must be sought shall run from the final disposition of such petition. The secretary, in the interest of justice, may grant a stay of a decision on a coastal use permit or approval of a local program until the final disposition of a petition for reconsideration.

D. Any person authorized by this Subpart to appeal a coastal use permit decision or any local government aggrieved by a final decision on approval of a local program may seek judicial review of that decision whether or not a petition for reconsideration has been filed under this Section. A preliminary, procedural, or intermediate action by the secretary or a determination of local or state concern under R.S. 49:214.30(C)(1) or of direct and significant impact under R.S. 49:214.34 is immediately reviewable if review of the secretary's final permit decision or action would not provide an adequate remedy or would inflict irreparable injury.

E. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the proposed use is to be situated within thirty days after mailing of notice of the final decision by the secretary or, if a reconsideration is requested, within thirty days after the decision thereon.

F. Judicial review shall otherwise be pursuant to the Louisiana Administrative Procedure Act, provided that all such cases shall be tried with preference and priority. Trial de novo shall be held upon request of any party.

R.S. 49:213.16. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1982, No. 813, § 1; Acts 1983, No. 591, § 1, eff. July 14, 1983; Acts 1983, No. 705, § 4, eff. Sept. 1, 1983; Acts 1984, No. 408, § 1, eff. July 6, 1984. Redesignated as R.S. 49:214.35 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

### § 214.36. Enforcement; injunction; penalties and fines

A. The secretary and each local government with an approved program shall initiate a field surveillance program to ensure the proper enforcement of the management program. The secretary may enter into interagency agreements with appropriate agencies to assist in the surveillance, monitoring, and enforcement activities pursuant to this Subpart.

B. The secretary, and each local government with an approved program as to uses under its jurisdiction, shall have the authority to issue cease and desist orders against any person found to be in violation of this Subpart or the rules and regulations issued hereunder.

C. The secretary, and each local government with an approved program as to coastal use permits issued by it, shall have the authority to suspend, revoke, or modify coastal use permits if the user is found to have violated any of the conditions of the coastal use permit.

D. The secretary, the attorney general, an appropriate district attorney, or a local government with an approved program may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit.

E. A court may impose civil liability and assess damages; order, where feasible and practical, the payment of the restoration costs; require, where feasible and practical, actual restoration of areas disturbed; or otherwise impose reasonable and proper sanctions for uses conducted within the coastal zone without a coastal use permit where a coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit. The court in its discretion may award costs and reasonable attorney's fees to the prevailing party.

F. Any person found to have knowingly and intentionally violated the provisions of this Subpart, any of the rules and regulations issued hereunder, or the terms or conditions of any coastal use permit shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars, or imprisonment for not more than ninety days, or both. This penalty shall be in addition to any other costs or penalties assessed pursuant to this Section.

G. Any action pursuant to this Section, whether criminal or civil, must be brought in any parish in which the use or activity is situated. If the use or activity is situated in one or more parishes, then any action may be brought in either of the parishes in which the use or activity is situated.

H. In addition to the other enforcement actions authorized by this Section, whenever the secretary determines a violation of any provision of this Subpart, or any rules and regulations issued hereunder or the terms or conditions of any coastal use permit has occurred, the secretary may assess costs and penalties pursuant to Subsection I.

I. In addition to the other enforcement actions authorized by the provisions of this Section, the secretary may do any or all of the following:

(1) Assess the violator all or a portion of the costs of abatement or mitigation of damages to the coastal zone in accordance with R.S. 49:214.41.

(2) Assess the violator an administrative penalty in accordance with the following administrative penalty system:

(a) The amount of administrative penalty per violation shall be determined by a formula of $B(V + P + C + I) = Penalty, where B is base assessment, V is habitat value,[1] P is prior knowledge value, C is cooperation value, and I is impact damage value. No penalty shall be less than fifty dollars and the maximum penalty for violations shall be twelve thousand dollars.

(b) Base assessment (B) is the amount of a permit application fee and processing fee if a permit had been applied for under this Subpart or fifty dollars where no fee would have been charged.

(c) The ecological value[1] (V) shall be assessed as follows:

(i) A value of one-half shall be applied to areas the secretary determines to be of minor value, such as streams, rivers, canals, developed cheniers, bayous, trenasses, or lakes with insignificant public resource value or wetlands of low resource value as a result of historical disturbances or physical alterations that were not violations existing prior to the violation under consideration.

(ii) A value of one shall be applied to areas the secretary determines to be of average value such as sections of streams, rivers, cheniers, canals, bayous, or trenasses of marginal value for rearing or spawning habitat for fish and wildlife populations, marginal wetlands or beaches of marginal wildlife habitat value.

(iii) A value of one and one-half shall be applied to areas the secretary determines to be of major value, such as a significant fish and wildlife spawning area, eagle nesting areas, significant waterfowl rearing habitat, tidal salt, saline, brackish, or intermediate marshes, cheniers, tidal mudflats, freshwater wetlands with high diversity and high public resources value, beaches of significant wildlife habitat value and state scenic rivers and waterways designated under R.S. 56:1840 et seq. or administrative rules adopted thereunder.

(d) The prior knowledge value (P) shall be determined by the secretary as follows:

(i) A value of one-half shall be applied where the secretary determines the person was unaware of this Subpart, as demonstrated by the fact that the person had neither applied for any coastal use permit in the past, nor received correspondence from the Coastal Management Division concerning the commission of a possible violation.

(ii) A value of one shall be applied where the secretary determines the person had previously applied for a coastal use permit or received correspondence from the Coastal Management Division concerning the commission of a possible violation.

(iii) A value of one and one-half shall be applied where the person had previously violated this Subpart.

(e) The cooperation value (C) shall be determined as follows:

(i) A value of one-half shall be applied where the person restores resource damage as requested by the secretary without the need for an enforcement order or court action by the secretary.

(ii) A value of one and one-half shall be applied where the person is not cooperative in restoring resource damage as requested by the secretary and the secretary must issue an enforcement order or obtain a court order to restore the resource.

(f) The impact damage value (I) shall be determined by the secretary as a measure of the extent or size of the ecologically impacted area as follows:

(i) Where the secretary determines the adversely affected area of the violation would naturally restore within one year, and the impact area is less than one acre in size or an impacted waterway, shoreline, or waterfront property is less than one hundred linear feet, a value of one-half shall be applied.

(ii) Where the secretary determines the adversely affected area of the violation would naturally restore within two years, and the impact area is less than one acre in size or the impacted waterway, shoreline, or waterfront property is less than one hundred linear feet, a value of one shall be applied.

(iii) Where the secretary determines that the adversely affected area would exceed the restoration time or the impacted area criteria required in Items (i) or (ii) of this Subparagraph, a value of one and one-half shall be applied.

J. The monies collected by the state under the provisions of this Section shall be deposited as follows:

(1) The monies collected by the secretary for violations relating to use of state concern shall be used for the following purposes only in the proportions stated:

(a) Fifty percent of the monies collected shall be used to reimburse the Department of Natural Resources for the cost of enforcing the provisions of this Subpart, and shall be deposited in the Coastal Resources Trust Fund, as provided in R.S. 49:214.40.

(b) Twenty-five percent of the monies collected shall be placed in local government mitigation banks established in accordance with R.S. 49:214.41 and the rules and regulations adopted thereunder.

(c) Twenty-five percent of the monies collected shall be placed in the Wetlands Conservation and Restoration Fund established in Article 7, Section 10.2 of the Louisiana Constitution.

(2) The monies collected by the secretary for violations relating to a use of local concern shall be placed

in local government mitigation banks established in accordance with R.S. 49:214.41 and the rules and regulations adopted thereunder. Each local government's mitigation bank shall be credited one hundred percent of the monies collected for violations relating to a use of local concern occurring within its geographic borders, except that for violations occurring within the geographic borders of two or more local governments the monies shall be divided on a *pro rata* basis and deposited accordingly in the local government's mitigation banks. In the event there is no local government mitigation bank in the parish in which the adverse impact is located, the monies shall be deposited in the Wetlands Conservation and Restoration Fund established in Article 7, Section 10.2 of the Louisiana Constitution, and can only be used for mitigation projects within the geographic borders of that local government.

K. In determining whether to assess, pursuant to Subsection I of this Section, costs or penalties, and the amounts of such assessments, the secretary shall consider the following factors:

(1) The monetary benefits realized by the violator due to the noncompliance.

(2) The history of previous violations or repeated noncompliance for the last five years.

(3) The nature and gravity of the violation, including the adverse impact on the coastal zone.

(4) The degree of culpability, recalcitrance, defiance, or indifference of the violator to the laws, regulations, or orders of the secretary or regulations of the local government.

(5) The cost to the department or state of bringing and prosecuting an enforcement action against the violator.

(6) Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation.

L. No penalties or costs shall be assessed without the person charged being given notice and an opportunity for an adjudicatory hearing, pursuant to the Administrative Procedure Act. The secretary shall appoint an independent hearings officer. The person charged may waive the adjudicatory hearing upon payment of the amount demanded by the secretary, and will be liable for all costs associated with the adjudicatory hearing.

M. Nothing in this Section, shall prohibit any local political subdivision, without a local coastal use permit program approved as provided for in R.S. 49:214.30 from enforcing any ordinance or regulation relating to wetlands protection or restoration.

N. (1) In addition to the other enforcement actions authorized by the provisions of this Section, for each incident resulting in an administrative penalty being assessed, the secretary shall issue an after-the-fact coastal use permit or permit modification specifying terms and conditions that must be adhered to for the unauthorized activity to remain in place. In determining the terms and conditions to be placed on the after-the-fact permit, the secretary shall consider the following factors:

(a) The degree to which the activity complies, or fails to comply, with the coastal use guidelines.

(b) The need for compensatory mitigation to be carried out when the activity altered wetlands of the coastal zone.

(c) The need for partial restoration of the site if the coastal use could be carried out with lesser impact to coastal waters or wetlands.

(d) The need for restoration of the site upon abandonment or completion of the coastal use.

(2) Prior to issuing a final after-the-fact permit, the secretary shall provide to the person conducting the activity and to the owner of the property on which the activity occurred, a draft after-the-fact coastal use permit. The secretary shall also cause the draft after-the-fact coastal use permit to be published one time in the official state journal and allow the public time to offer comments on the proposed after-the-fact coastal use permit to the secretary. All comments must be received by the secretary within fifteen calendar days following the date of publication in the state journal. The secretary shall fully consider all comments received and issue a final after-the-fact coastal use permit five days following the end of the public comment period.

R.S. 49:213.17. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Amended by Acts 1983, No. 705, § 4, eff. Sept. 1, 1983. Redesignated as R.S. 49:214.36 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989. Amended by Acts 1993, No. 194, § 1.

[1]The enrolled bill assigns the variable "V" to "habitat value" in subpar. I(2)(a) and to "ecological value" in subpar. I(2)(c).

### § 214.37. Approval of rules, regulations, or guidelines

Any rule, regulation, or guideline shall be proposed or adopted pursuant to the rule making procedures set forth in the Louisiana Administrative Procedures Act [1] and shall be subject to approval by the House Committee on Natural Resources and Senate Committee on Natural Resources. Such approval shall be presumed unless either committee submits objections in writing within fifteen days after receipt of the proposed rule, regulation, or guideline. Provided that such written objections shall be subject to override by the governor within five days after receipt of the objections by the governor.

R.S. 49:213.18. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Redesignated as R.S. 49:214.37 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

[1] Administrative Procedure Act, R.S. 49:950 et seq.

### § 214.38. Effect on titles

A. Nothing in this Subpart shall be construed as affecting the status of the title of the state or other

governmental body to real rights in lands or water bottoms.

B. The involuntary acquisition, directly or indirectly, of privately owned property is not necessary to achieve the intents and purposes of this Subpart. No rule, regulation, ordinance, order, or standard, the purpose or application of which is to effect an involuntary acquisition or taking of such property, shall be adopted, enacted, or implemented pursuant to the provisions of this Subpart.

R.S. 49:213.19. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Redesignated as R.S. 49:214.38 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.39. Effective date**

This Subpart shall become effective on January 1, 1979, except that the coastal use permit program established pursuant to R.S. 49:214.30 shall not commence until thirty days after the adoption of guidelines pursuant to R.S. 49:214.27.

R.S. 49:213.20. Acts 1978, No. 361, § 1, eff. Jan. 1, 1979. Redesignated as R.S. 49:214.39 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989.

**§ 214.40. Coastal Resources Trust Fund**

A. (1) Subject to the exceptions contained in Article VII, Section 9(A) of the Constitution of Louisiana, all funds collected by the Louisiana coastal resources program from processing and evaluation of coastal use permit applications and consistency determinations, from any federal outercontinental shelf revenue sharing program, and from any other sources, shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund.

(2) Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund, which is hereby created in the state treasury and designated as the Coastal Resources Trust Fund, an amount equal to the total amount of funds paid into the treasury by the Louisiana coastal resources program.

(3) The monies in the trust fund shall be invested by the state treasurer in the same manner as monies in the state general fund. The monies in the Coastal Resources Trust Fund shall be used solely for the programs and purposes and in the amounts appropriated each year to the Louisiana coastal resources program by the legislature.

B. The Louisiana coastal resources program shall keep a set of books showing from whom every dollar is received and for what purpose and to whom every dollar is paid and for what purpose. It also shall keep in its file vouchers or receipts for all moneys paid out.

C. Any surplus funds remaining to the credit of the trust fund on July 1 of each year commencing with the fiscal year 1983-84, after all appropriations of the preceding fiscal year have been paid, and all interest earned on money from the trust fund since the creation of the fund and thereafter shall remain to the credit of the Coastal Resources Trust Fund for expenditure from year to year solely by the Louisiana coastal resources program or any uses as provided for in the federal outer continental shelf revenue sharing legislation in accordance with appropriation made by the legislature for the purposes and functions of said program, and no part thereof shall revert to the state general fund. This provision shall not be construed to prohibit the appropriation of funds out of the state general fund to the commission.

R.S. 49:213.22. Added by Acts 1983, No. 512, § 1. Redesignated as R.S. 49:214.40 by Acts 1989, 2nd Ex.Sess., No. 6, § 7, eff. July 14, 1989. Amended by Acts 1992, No. 1075, § 1.

**§ 214.41. Mitigation of coastal wetlands losses**

A. As used in this Section, the following terms shall have the meaning ascribed to them below:

(1) "Compensatory mitigation" means replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of those values caused by a permitted activity.

(2) "Ecological value" means the ability of an area to support vegetation and fish and wildlife populations.

(3) "Mitigation" means all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

(4) "Overriding public interest" means that the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

(5) "Permit" means a coastal use permit.

(6) "Wetlands" means the same as defined in R.S. 49:214.3.

B. The secretary shall adopt regulations to require mitigation. The regulations adopted pursuant to the authority of this Section shall require consideration of all relevant factors in determining the extent of mitigation, including societal and economic value of the proposed activity, ecological values impacted by the proposed activity, availability of methods for avoiding or minimizing the impacts associated with the proposed activity and for restoring the site impacted by the proposed activity.

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, unless the permittee has satisfactorily

demonstrated to the secretary that the required mitigation would render impracticable an activity proposed to be permitted and that such activity has a clearly overriding public interest. In such an instance, provided that the secretary has decided to issue the permit, the secretary shall grant a variance to this compensatory mitigation requirement after giving due public notice. The secretary shall also provide a statement of finding as to the reasons for granting such variance.

D. The secretary shall adopt regulations for evaluating ecological values and for establishing and administering a mitigation credit banking system for compensating the loss of those values, as provided for by this Section. The regulations shall, at a minimum, provide for:

(1) Criteria under which mitigation credits may be earned.

(2) Geographical limitations for the application of mitigation bank credits.

(3) Criteria for the use, banking, or sale of banked credits.

(4) The approval by the secretary for the earning, using, banking, or selling of mitigation bank credits.

(5) Requirements for the maintenance and submission by the secretary of records concerning ecological value losses, and credit and debit accounts for each mitigation bank.

E. The owner of the land on which a permitted activity is to occur shall have the option of requiring on-site or off-site compensatory mitigation on his property, notwithstanding any geographical limitation otherwise required by the regulations adopted by the secretary, provided that the secretary determines that the proposed mitigation is acceptable and sufficient.

F. The secretary may adopt regulations establishing procedures for defining and delineating proposed "special significance areas" which may include areas of particular ecological uniqueness or vulnerability, or areas which have special ecological values or productivity. The procedures established by the secretary shall provide as follows:

(1) Upon determining that the unique or special resources in such area are susceptible to loss as a result of future activities in such area, the secretary may, in accordance with the provisions of R.S. 49:953(A), designate a special significance area, which area shall in no event exceed two thousand acres. The designation of the area as one of special significance shall expire on the first day of July of the year following the designation and the area, or any part thereof, shall not be subject to redesignation as such except by the legislature as set forth below.

(2) The secretary may propose to the legislature and thereafter the legislature may, by concurrent resolution, delineate special significance areas upon finding that an area is of particular ecological uniqueness or vulnerability or has special ecological values or productivity, which areas shall in no event exceed two thousand acres each.

(3) Upon designation of a special significance area, the regulations adopted by the secretary shall require that a permittee, in order to receive a permit to conduct an activity having a direct and significant adverse impact on unique or special resources of such area, must demonstrate that the public interest benefits of the proposed activity clearly outweigh the public interest benefits of preserving the unique or special ecological values of the area and must, at a minimum, provide full compensatory mitigation for ecological value losses associated with the permitted activity.

G. Notwithstanding any other provision of this Section to the contrary, in no event shall any regulation adopted by the secretary require compensatory mitigation for any use or activity which the secretary determines is primarily designed, over the life of the project, to provide a net gain in ecological values by replacing, substituting, enhancing, or protecting wetlands, including privately funded marsh management projects or plans.

Amended by Acts 1990, No. 1040, § 1.

## PART II-A. [BLANK]

**Redesignation**

*A Part designated as Part II-A of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, comprised of R.S. 49:214.51 to R.S. 49:214.54, relating to a drug policy board, was enacted by Acts 1990, No. 1029, § 2, effective July 26, 1990, and was redesignated as Part IV of Chapter 2 comprised of R.S. 49:219.2 to R.S. 49:219.4 pursuant to the statutory revision authority of the Louisiana State Law Institute.*

**§§ 214.51 to 214.54. [Blank]**

## PART III. POWERS AND DUTIES

**Termination of Agencies and Orders**

*Section 2 of Acts 1982, No. 687 (§ 1 of which enacted R.S. 49:215 and amended subsec. B of R.S. 49:954.1) provided:*

*"All executive branch agencies created by executive order, in existence on July 1, 1982, shall terminate on July 1, 1983, unless specifically terminated by law or by executive order or unless statutorily created prior to that date. All executive orders in effect on July 1, 1982 shall be ineffective on and after April 11, 1984, unless previously terminated by statute or executive order."*

*Acts 1982, No. 687, § 2, was repealed by Acts 1984, No. 778, § 2, effective September 3, 1984. Prior to repeal, § 2 of Acts 1982, No. 687, was suspended from noon March 12, 1984,*

# APPENDIX C
# SAMPLE FORMS

# LOUISIANA DEPARTMENT OF NATURAL RESOURCES
# COASTAL MANAGEMENT DIVISION

## SPECIAL PUBLIC NOTICE

**Landowner Notification**

Act 970 of the 1993 Regular Session of the Louisiana Legislature requires applicants for Coastal Use Permits to notify the owner of the property where the proposed activity is to occur, of the proposal. Prior to a Coastal Use Permit application being considered complete, the applicant must provide the Coastal Management Division with an affidavit attesting that the landowner has been notified.

A copy of a Coastal Management Division approved Landowner affidavit is attached to this Public Notice and Coastal Management Division recommends that this form be used. However, equivalent forms, containing the same information, will be accepted.

Please direct any questions regarding this matter to Rocky Hinds, Permit and Mitigation Manager, at 1-800-267-4019.

## AFFIDAVIT OF NOTIFICATION TO OWNER OF PROPERTY

**STATE OF LOUISIANA**

**PARISH OF** _____

I, _____, am applying to the Coastal Management Division of the Louisiana Department of Natural Resources for a Coastal Use Permit for the purpose of:

This activity is to occur on the following described property:

Further, with regard to ownership of the above described property (check appropriate block):

_____ I am the owner of the property on which the above described activity is to occur.

**OR**

_____ I have made every reasonable effort to determine the identity and current address of the owner(s) of the land on which the above described use is to occur, which included, if necessary, a search of the public records of the parish. The owner(s) and their address(es) are as follows (use additional sheets of paper as required):

A copy of the application has been distributed to the above listed owner(s).

Signed this _____day of_____, 19_____.

BY:

_____

APPLICANT

| APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT *(33 CFR 325)* | OMB APPROVAL NO. 0710-003 Expires October 1996 |
|---|---|

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Dep-ment of Defense, Washington Headquarters Service Directorate of InformationOperations and Reports, 1215 Jefferson Davis Highway, Suite 12 rlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20 Please DO NO RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

**PRIVACY ACT STATEMENT**

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

*(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)*

| 1. APPLICATION NO. | 2. FIELD OFFICE CODE | 3. DATE RECEIVED | 4. DATE APPLICATION COMPLETED |
|---|---|---|---|
| | | | |

*(ITEMS BELOW TO BE FILLED BY APPLICANT)*

| | |
|---|---|
| 5. APPLICANT'S NAME | 8. AUTHORIZED AGENT'S NAME AND TITLE *(an agent is not required)* |
| 6. APPLICANT'S ADDRESS | 9. AGENT'S ADDRESS |
| 7. APPLICANT'S PHONE NOS. W/AREA CODE<br>a. Residence<br>Business | 10. AGENT'S PHONE NOS. W/AREA CODE<br>a. Residence<br>b. Business |

11. STATEMENT OF AUTHORIZATION

I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE DATE

**NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY**

12. PROJECT NAME OR TITLE *(see instructions)*

| | |
|---|---|
| 13. NAME OF WATERBODY, IF KNOWN *(if applicable)* | 14. PROJECT STREET ADDRESS *(if applicable)* |
| 15. LOCATION OF PROJECT<br>COUNTY STATE | |

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, *(see instructions)*

17 DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

23. Is Any Portion of the Work Already Complete? Yes ____ No ____ IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (If more than can be entered here, please attach a supplemental list).

25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

| AGENCY | TYPE APPROVAL* | IDENTIFICATION NUMBER | DATE APPLIED | DATE APPROVED | DATE DENIED |
|---|---|---|---|---|---|

To the best of my knowledge the proposed activity described in my permit application complies with and will be conducted in a manner that is consistent with the LA Coastal Management Program.

*Would include but is not restricted to zoning, building and flood plain permits

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

| SIGNATURE OF APPLICANT | DATE | SIGNATURE OF AGENT | DATE |
|---|---|---|---|

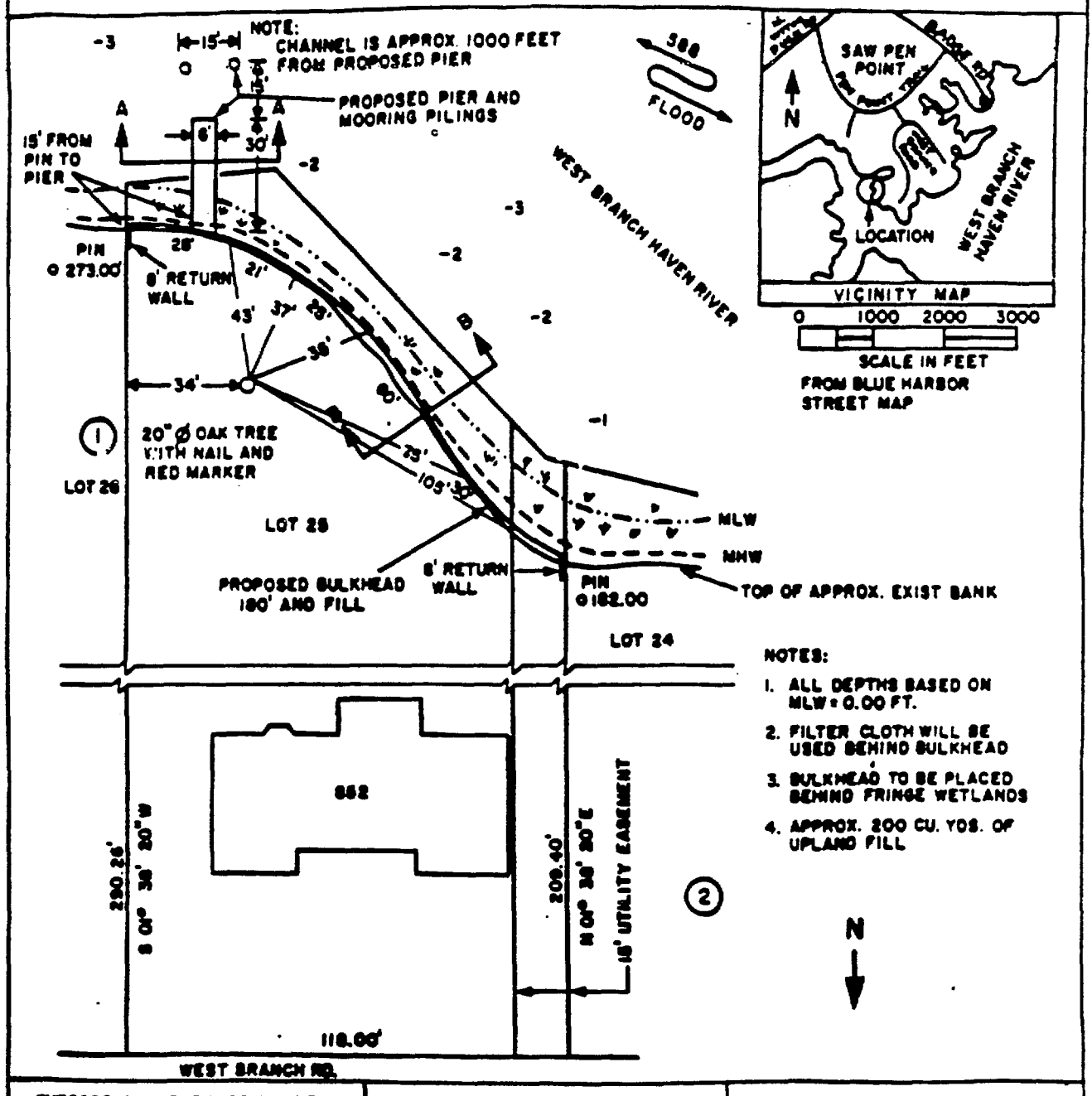
The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

*U.S. GPO:1994-520-478/82018

## SAMPLE DRAWINGS FOR A PERMIT APPLICATION

NOTE: THE DRAWINGS SUBMITTED NEED NOT BE PREPARED BY A PROFESSIONAL DRAFTSMAN AS IN THESE SAMPLES.




PURPOSE: PREVENT EROSION AND PROVIDE BOATING ACCESS

DATUM: MLW

ADJACENT PROPERTY OWNERS:

1. MARY L. CLARK
2. HARRY N. HAMPTON
3.

**PLAN VIEW**

0 40 80

1" = 40'

FRED R. HARRIS
882 WEST BRANCH ROAD
BLUE HARBOR, MD 21703

PROPOSED BULKHEAD PIER AND FILL

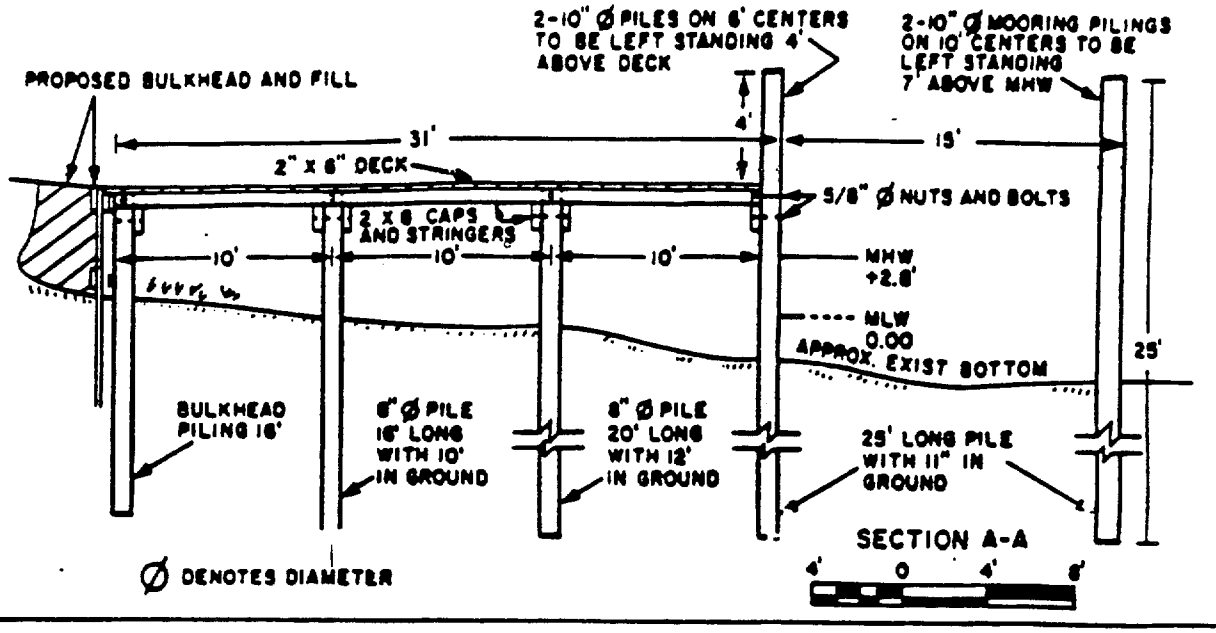
IN: WEST BRANCH HAVEN RIVER

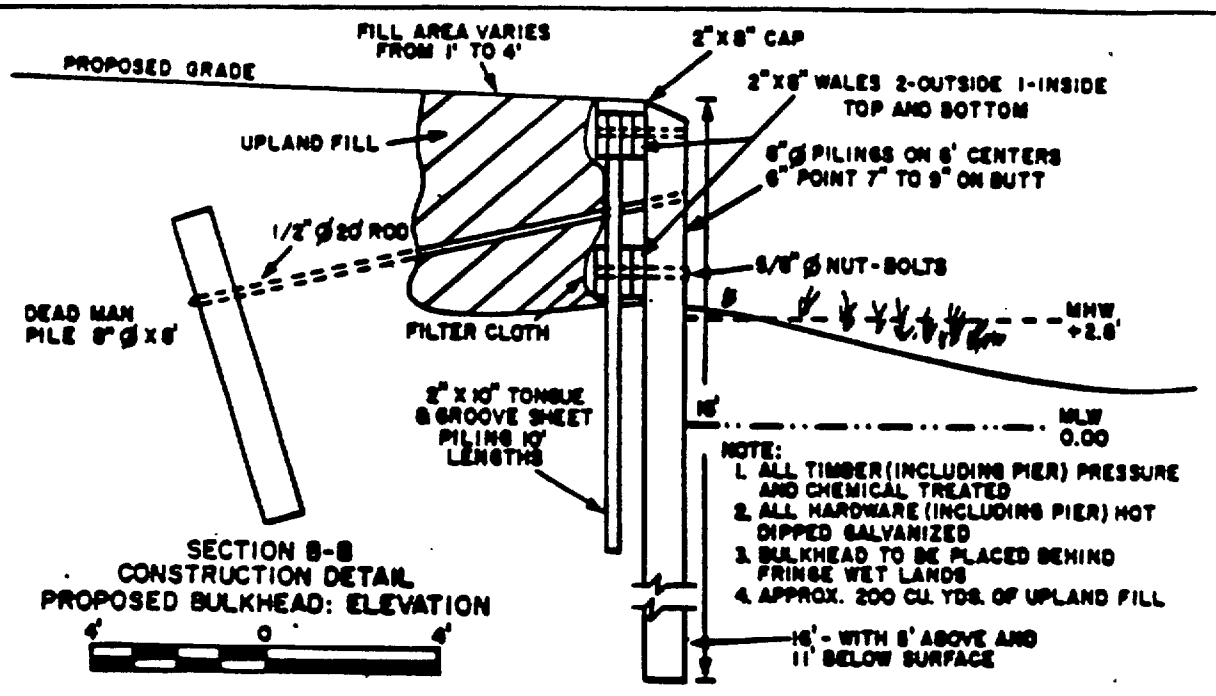
AT: BLUE HARBOR

COUNTY OF: KING EDWARD STATE: MD

APPLICATION BY: FRED R. HARRIS

SHEET 1 OF 2 DATE 10-16-82




| | | |
|---|---|---|
| PURPOSE: PREVENT EROSION AND PROVIDE BOATING ACCESS<br>DATUM: MLW<br>ADJACENT PROPERTY OWNERS:<br>1. MARY L. CLARK<br>2. HARRY N. HAMPTON<br>3. | SECTION VIEWS<br><br>FRED R. HARRIS<br>852 WEST BRANCH ROAD<br>BLUE HARBOR, MD 21703 | PROPOSED BULKHEAD PIER AND FILL<br><br>IN: WEST BRANCH HAVEN RIVER<br>AT: BLUE HARBOR<br>COUNTY OF: KING EDWARD STATE: MD<br>APPLICATION BY: FRED R. HARRIS<br>SHEET 2 OF 2 DATE 10-16-82 |

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# LOUISIANA COASTAL NONPOINT PROGRAM
# FINDINGS AND CONDITIONS

## INTRODUCTION

The U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) approve the coastal nonpoint pollution control program submitted by the State of Louisiana pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), subject to certain conditions.

This document provides the specific findings used by NOAA and EPA as the basis for the decision to approve the State's program. It also provides the rationale for the findings and includes the conditions that have been established for Louisiana to receive final approval of its program.

NOAA and EPA have written this document as succinctly as possible. The references in this document to page numbers and text refer to the Louisiana Coastal Nonpoint Pollution Control Program, October 1995 ("program submittal"). We have relied upon, but do not repeat here, the extensive information that the State included in the program submittal. Further information and analysis is contained in the administrative record for this approval decision and may be reviewed by interested parties at the following locations:

EPA/Office of Wetlands, Oceans and Watersheds
Assessment & Watershed Protection Division
Nonpoint Source Control Branch
401 M St., SW (4503-F)
Washington, DC 20460
Contact: Chris Zabawa (202/260-7101)

NOAA/Office of Ocean and Coastal Resource Management
Coastal Programs Division
SSMC-4, N/ORM3
1305 East-West Highway
Silver Spring, MD 20910
Contact: Jewel Griffin (301/713-3109, x163)

U.S. EPA Region 6
Ecosystems Protection Branch (6WQ-EM)
1445 Ross Avenue
Dallas, Texas 75202
Contact: Darlene Coulson (214/665-7455)

## I. BOUNDARY

**FINDING:** Louisiana's proposed 6217 management area excludes existing land and water uses that have or are reasonably expected to have a significant impact on the coastal waters of the State.

**CONDITION:** The Louisiana Department of Natural Resources (LDNR), Louisiana Department of Environmental Quality (LDEQ), EPA, NOAA, and other appropriate State, local, and federal agencies will participate in a cooperative process to review relevant information and to determine an appropriate 6217 management area boundary for Louisiana consistent with established national guidance for the 6217 program.

**RATIONALE:** Louisiana's proposed 6217 management area consists of the State's existing coastal zone, comprising all or parts of 19 parishes. The State's proposal represents a substantial reduction of the NOAA recommended 6217 management area.

Based on a review and analysis of water quality information in the State's 1992 and 1994 section 305(b) reports and information from the Barataria/Terrebonne National Estuary Program (NEP), NOAA and EPA have determined that there are agricultural sources in the upper reaches of the Barataria and Terrebonne basins (inland of Louisiana's proposed 6217 management area) that have significant impacts on estuarine water quality. A study conducted by the Barataria/ Terrebonne NEP concludes that both the Barataria and Terrebonne estuaries have been negatively affected by inputs of nutrients and contaminants[1]. The report states that agricultural activities in the upper basins (landward of the State's proposed 6217 management area) have a significant effect on these estuaries. The study also finds that agricultural runoff is significant in terms of nutrient loadings. The wetlands in these basins incompletely buffer the effects of increased nutrient loadings on water quality[2].

Within the Lake Ponchartrain Basin, the 1992 section 305(b) report indicated that 68 miles of the Tickfaw River were impaired by silvicultural sources and only partially supported uses. In the 1994 305(b) report, these 68 miles were again listed as not supporting designated uses. The water body segment (040502) that drains to the estuarine waters of Lake Maurepas was listed in the 1992 section 305(b) report as threatened due to nonpoint sources (unspecified), agriculture, silviculture, construction and urban runoff.

The State's 305(b) report for 1992 also indicated that the Tangipahoa River basin was only partially supporting uses, in part due to nonpoint source impacts from agricultural, construction and urban runoff, and silvicultural sources. The 1994 305(b) report also indicated that uses in the basin were only partially supported and listed pasture land, feedlots, animal holding facilities, forest management, land development and septic systems as identified problems. Based on demographic information, it is also evident that there is considerable conversion of land to urban

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1. Rabalais, N.N., Q. Dortch, et al., 1995. Status and Trends of Eutrophication, Pathogen Contamination and Toxic Substances in the Barataria and Terrebonne Estuarine System. BTNEP Pub. No. 22, Barataria-Terrebone National Estuary Program, Thibodaux, LA.

2. February 1, 1996 memorandum from Barbara Keeler to Darlene Coulson. In that memorandum Ms. Keeler stated that she "would support a boundary that includes the entire watersheds of the Barataria and Terrebonne basins. These areas are not completely incorporated within the State's current coastal zone boundary. Agricultural activities in those upper basins have a significant effect on the estuaries [emphasis added]."

uses in the Florida Parishes, as many communities have significantly increased population in the last five to ten years. This increasing urbanization can result in potentially significant impacts to the State's coastal waters.

Louisiana will need to ensure that its program is in conformity with the 6217(g) management measures and includes enforceable policies and mechanisms to ensure implementation throughout the entire 6217 management area determined by the cooperative process envisioned above. In many cases, existing State programs already apply statewide. However, as noted in the findings and conditions below, some of these programs are limited in geographic scope and others need to be otherwise modified to ensure implementation of the 6217(g) management measures throughout the 6217 management area.

## II. AGRICULTURE

**FINDING:** Louisiana's program does not include management measures in conformity with the 6217(g) guidance and does not include enforceable policies and mechanisms to ensure implementation, except for a back-up authority for the pesticide management measure.

**CONDITION:** Within three years, Louisiana will include in its program management measures for agricultural sources in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation of the agricultural management measures throughout the 6217 management area. Within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the pesticide management measure throughout the 6217 management area.

**RATIONALE:** In the program submittal, Louisiana states that the coastal nonpoint program will "address" the seven agricultural management measures "recommended" by NOAA and EPA. It is not clear from this statement that the State intends to implement the 6217(g) management measures on all applicable land in the 6217 management area. On pages IVA-12 to IVA-36 of the program submittal, Louisiana describes a number of State and federal programs that rely on education, technical assistance, and voluntary initiatives to address certain elements of the agricultural management measures, but Louisiana does not describe how these programs will implement each of the agricultural management measures in the 6217(g) guidance.

On pages IVA-41 to IVA-47 of the program submittal, Louisiana provides a matrix for each of the 6217(g) management measures and lists enforceable policies and mechanisms that, per the State, can be used to ensure implementation. With the exception of the back-up enforcement authority identified for the pesticide management measure under the Pesticide Law (LA R.S. 3:3201-3376), the citations listed do not provide authority to ensure implementation of the agricultural management measures. For example, the statute listed for the erosion and sediment control management measure provides enabling authority to the Soil and Water Conservation Committee to promulgate rules and regulations, but no rules and regulations are cited and there does not appear to be any linkage of this authority to the management measure. Also, section 2076 (A)(2) of the Louisiana Water Control Law (LA R.S. 30:2071-2078) exempts "any unintentional nonpoint-source discharge resulting from or in connection with the production of raw agricultural, horticultural, or aquacultural products" from coverage under the law.

Louisiana has convened a broad cross-section of the agricultural community to identify best management practices (BMPs) that can be used to implement the management measures. BMP study manuals have been developed for cotton, dairy, rice, sugarcane, feed grains, poultry production and soybeans. These manuals have not yet been finalized and the State has not described how it will use the practices contained in these manuals, in concert with existing programs and authorities, to achieve widespread implementation of the management measures. In addition, a schedule for implementation was not presented.

Finally, with regard to Confined Animal Facilities, the State's Concentrated Animal Facility Regulations (LAC Title 33, Part IX Section 301(J)) authorize the Department of Environmental Quality (DEQ) to designate some animal feeding operations[3] within the scope of the management measures as concentrated animal feeding operations if the facility discharges pollutants directly to surface waters through ditches or if a waterbody flows through facility. Therefore, some animal feeding operations may be exempted from the coastal nonpoint program requirements if they have an NPDES permit. However, many facilities that are subject to the management measure for large unit confined animal facilities management and all facilities subject to the measure for small units will not be subject to the NPDES permits.

## III. FORESTRY

**FINDING:** Louisiana has not provided sufficient justification to support a categorical exclusion of forestry from its coastal nonpoint program.

**CONDITION:** Within three years, Louisiana will include in its program management measures for forestry in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

**RATIONALE:** Louisiana has identified waterbodies in its section 305(b) reports that are impaired by forestry. Of the 890 miles of assessed rivers within the existing coastal management area, there are 59 river miles listed as being impaired by silviculture, including segments of the Tangipahoa River and other segments within the Lake Pontchartrain basin. As indicated by these impacts and information on harvesting activity included in the program submittal, the State has not demonstrated that forestry sources do not , and are not reasonably anticipated to, present significant adverse effects to Louisiana's coastal waters.

Louisiana has a commendable *Recommended Forestry Best Management Practices for Louisiana* handbook (1988) which addresses many of the management measures. These include guidelines for streamside management zones, permanent access roads and road construction, timber harvesting, reforestation, and forest chemicals. Education and outreach programs have been instrumental in increasing the adoption of these practices by forest landowners and timber harvesters.

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3. Thresholds for designating concentrated animal feeding operations include: 300 or more head of beef, 150 or more horses, 200 or more head of dairy cows, 30,000 or more layers/broilers or 9,000 or more layers/broilers (using liquid manure), 16,500 or more Turkeys, and 750 or more head of swine, if conditions described above are met.

In addition, the Louisiana Office of Forestry regularly conducts standardized forestry BMP compliance surveys. The BMP compliance rate has increased from 10% (based on a Soil Conservation Service Survey) in 1981 to 51% (based on a survey conducted by the Louisiana Office of Forestry) in 1991. A more recent (1994) survey shows adoption of forestry BMPs on nearly 80% of the 400 individual forestry operations surveyed statewide. While these figures are encouraging, more widespread use of Louisiana's forestry BMPs is clearly needed.

EPA and NOAA commend the use of on-site compliance checks and audits by State, private, and industry personnel to help ensure implementation of Louisiana's best management practices in all phases of silvicultural activity. We encourage Louisiana to incorporate existing forestry programs, including the State's *Recommended Forestry Best Management Practices for Louisiana,* into the coastal nonpoint program.

## IV. URBAN

### A. NEW DEVELOPMENT and SITE DEVELOPMENT

**FINDING:** Louisiana's program includes management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation, except the management measures and authorities do not apply throughout the 6217 management area or to all applicable activities and Louisiana's program does not include management measures to reduce the average annual loadings of total suspended solids by 80 percent. For areas and activities not covered by the State's existing program, Louisiana has identified backup enforceable policies and mechanisms but has not yet demonstrated the ability of these authorities to ensure widespread implementation throughout the 6217 management area.

**CONDITION:** Within three years, Louisiana will include in its program management measures to reduce average annual loadings of total suspended solids by 80 percent. Within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the new development and site development management measures throughout the 6217 management area.

**RATIONALE:** The Louisiana Department of Natural Resources (DNR)/Coastal Management Division (CMD) administers the Coastal Use Permit Program, which was established under the Louisiana State and Local Coastal Resources Management Act of 1978 (LA R.S. 49:214.21-214.41). The Coastal Use Permit Program requires permits for land use activities within the State's designated coastal zone that involve dredging, fill, or other earth-moving or drainage impacting activities. The State has issued *Coastal Use Guidelines* that it uses to review and issue permits under the Coastal Use Permit Program. The *Guidelines* require that runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, and rate of flow and thus are in conformity with the second component of the new development management measure regarding the maintenance of post-development peak runoff rates and average volumes at pre-development levels. The *Guidelines* also conform with the components of the site development management measure by specifying that best preventive techniques be used to avoid the undesirable deposition of sediments in sensitive habitat or navigation areas; site clearing be limited, to the maximum extent practicable, to those areas immediately required for physical development, and significant reductions or blockage of water

flow or natural circulation patterns within or into estuarine systems or wetland forests be avoided to the maximum extent practicable. While the *Guidelines* require that "runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water ... quality," the guidelines do not include specific provisions to reduce the average annual loadings of total suspended solids by 80 percent.

The Coastal Use Permit Program ensures implementation of the measures within the State's existing coastal zone, except it does not apply to construction of single family residences, except where dredging or filling is involved, and typically exempts activities occurring wholly on lands 5 feet or more above mean sea level or within "fastlands" as defined by the program. In areas 5 feet or more above mean sea level and in "fastlands" within the coastal zone, Louisiana has identified a backup enforceable authority (LAC Title 43, Part I, Section 723(B)(2)(b)) that provides that if the Secretary of DNR finds that a proposed activity would have a direct and significant impact on coastal waters, a Coastal Use Permit is required. In areas outside the existing coastal zone, Louisiana has identified its water quality standards (LAC Title 33, Part IX, Chapter 11) as providing the State with backup enforcement authority when the water quality standards are violated. However, the State has not yet demonstrated the ability of either of these back-up authorities to ensure the widespread implementation of the measures throughout the 6217 management area.

## B. WATERSHED PROTECTION and EXISTING DEVELOPMENT

**FINDING:** Louisiana's program includes management measures in conformity with the 6217(g) guidance, except it does not include management measures to identify priority watershed pollutant reduction opportunities, establish a schedule for implementing appropriate controls, or preserve, enhance and establish buffers along waterbodies and their tributaries, and the management measures only apply to a limited area. The program includes enforceable policies and mechanisms to ensure implementation, except that they do not apply throughout the 6217 management area or to all applicable activities. For areas not covered by the State's existing program, Louisiana has identified backup enforceable policies and mechanisms to implement the management measures, but the State has not yet demonstrated the ability of these authorities to ensure widespread implementation throughout the 6217 management area.

**CONDITION:** Within three years, Louisiana will include in its program management measures in conformity with the 6217(g) guidance to identify priority watershed pollutant reduction opportunities, establish a schedule for implementing appropriate controls, and preserve, enhance and establish buffers along waterbodies and their tributaries. In addition, within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the watershed protection and existing development management measures throughout the 6217 management area.

**RATIONALE:** Louisiana does not currently have a comprehensive watershed program. The *Coastal Use Guidelines*, which are used by the State to review and issue Coastal Use Permits for development activities occurring within the State's coastal zone, provide a mechanism to implement several of the components of the watershed protection and existing development management measures. For example, the *Guidelines* state that significant land loss and erosion, as well as 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, and forestlands, must be avoided to the maximum extent practicable. The *Guidelines* also require that significant reductions or blockage of water flow or natural circulation patterns within or into estuarine systems or wetlands forest must be avoided to the maximum extent practicable. Moreover, the *Guidelines* require that surface alterations, to the maximum extent practicable, are located away from critical wildlife areas and vegetation areas and prohibit surface alterations to the maximum extent practicable that have high adverse impacts on natural functions.

The State's program, however, does not include a means for identifying priority local and/or regional watershed pollutant reduction opportunities or for developing a schedule for implementing appropriate controls. In addition, except for the State's Natural and Scenic Rivers Act (LA R.S. 56:1841 et seq.), which prohibits channelization; clearing and snagging; channel realignment; reservoir construction; and commercial clear cutting of timber within one hundred feet of the low water mark in designated Scenic Rivers, Louisiana's program does not provide a means for preserving, enhancing and establishing buffers along waterbodies and their tributaries.

For areas five feet or more above mean sea level and in fastlands within the coastal zone, Louisiana has identified a back-up enforceable authority (LAC Title 43, Part I, Section 723(B)(2)(b))) and, for areas outside the existing coastal zone, the State's water quality standards (LAC Title 33, Part IX, Chapter 11), but has not yet demonstrated the ability of these authorities to ensure the widespread implementation of the measures throughout the 6217 management area (see the discussion of these authorities in the new development and site development section above).

## C. CONSTRUCTION SITE EROSION AND SEDIMENT and CHEMICAL CONTROL

**FINDING:** Louisiana's program does not include management measures in conformity with the 6217(g) guidance for construction site erosion and sediment and chemical control. The program includes enforceable policies and mechanisms to ensure implementation, except that they do not apply to all applicable activities and only apply to a limited area. Louisiana has identified backup enforceable policies and mechanisms, but the State has not yet demonstrated the ability of these authorities to ensure implementation of the management measures throughout the 6217 management area.

**CONDITION:** Within three years, Louisiana will include in its program management measures in conformity with the 6217(g) guidance for construction site erosion and sediment and chemical control. Within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the construction site erosion and sediment and chemical control management measures throughout the 6217 management area.

**RATIONALE:** In its program submittal, Louisiana cites the *Coastal Use Guidelines* and Coastal Use Permitting Program as providing management measures and enforceable policies and mechanisms to implement the construction site erosion and sediment control management measure. While the *Guidelines* require that surface alteration sites and facilities are designed, constructed, and operated using best practical techniques to prevent the release of pollutants or

toxic substances into the environment, they do not specify that sediment be retained on site to the extent practicable or that an approved erosion and sediment plan be developed and implemented prior to construction activities.

In terms of the construction site chemical control management measure, the program includes the *Guidelines* mentioned above, as well as the Louisiana Pesticide Law, which regulates restricted use pesticides and requires certification of private and commercial applicators. These authorities, however, do not include measures to limit the application, generation, and migration of toxic substances common to construction sites other than regulated pesticides, such as fertilizers, oil, gasoline, grease, and other solvents. The State's Hazardous Waste Control Law regulates the manufacture, transportation, use and disposal of hazardous waste. The law or regulations, however, do not include specific measures in conformance to the (g) measures for construction site chemical control. Also, Louisiana's program does not provide measures for ensuring the application of nutrients at appropriate rates.

As discussed in the new development and site development section above, the *Coastal Use Guidelines* are implemented through the coastal use permit program within the existing coastal zone, but do not apply to single family residences and do not ensure implementation throughout the 6217 management area. While the State's Hazardous Waste Control Law and regulations may provide a possible enforceable policy and mechanism to implement the chemical control management measure, the State has not demonstrated that it can be used to ensure the proper storage and disposal of such materials. Louisiana has identified its Water Pollution Control Law (R.S. 30:2071-2078), which prohibits the discharge into any water of the State any waste or any other substance that will tend to cause water pollution in violation of any rule, order or regulation, in conjunction with the State's water quality standards (LAC Title 33, Part IX, Chapter 11) as a backup enforceable policy and mechanism to ensure implementation of these management measures. However, the State has not yet demonstrated the ability of these back up authorities to ensure the widespread implementation of the measures throughout the 6217 management area (see discussion of these authorities in the new development and site development section above).

## D. NEW and OPERATING ONSITE DISPOSAL SYSTEMS (OSDS)

**FINDING:** Louisiana's program includes management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area, except the program does not include measures for (1) nitrogen-limited surface waters, (2) adequate separation distances between OSDS systems and groundwater that is closely hydrologically connected to surface waters, and (3) the inspection of OSDS at a frequency to ascertain whether OSDS are failing.

**CONDITION:** Within three years, Louisiana will include in its program management measures in conformity with the 6217(g) guidance for (1) protection of nitrogen-limited surface waters, (2) adequate separation distances between OSDS system components and groundwater that is closely hydrologically connected to surface waters, and (3) the inspection of OSDS at a frequency to ascertain whether OSDS are failing.

**RATIONALE:** The State's Sanitary Code requires that plans and specifications for new individual sewage treatment systems be reviewed and approved by the Louisiana Department of Health and Hospitals (LDHH) in accordance with the State's *Regulations Controlling the Design and Construction of Individual Sewage Systems* (Appendix A of Chapter XIII of the Code). These regulations provide for placement of systems only in suitable areas and require adequate protective setbacks. The 24-inch separation distance between systems and groundwater called for in the regulations, however, is insufficient to meet the New OSDS management measure, which requires that OSDS be designed or sited at a density so as not to adversely affect surface waters or groundwater that is closely hydrologically connected to surface waters. In addition, neither the Sanitary Code nor the regulations provide for the use of denitrification systems where nitrogen-limited surface waters may be adversely affected by excess nitrogen loadings from onsite systems or for adequate inspections of operating systems.

The LDHH/Office of Public Health administers a permitting system under the State's Sanitary Code for the installation and modification of individual sewage treatment systems. In the case of individual mechanical plants, the Code ensures proper installation by requiring a certificate of proper installation from the licensed installer who performs the installation. For all other types of systems, the Code requires a site inspection to certify that systems have been properly installed. In addition, according to the State's program submittal, of the nineteen parishes that are all or partly in the State's existing coastal zone, sixteen require an inspection certificate before connections to public electric and water utilities will be made. We encourage the State to work with remaining local jurisdictions to improve local oversight of OSDS.

## E. POLLUTION PREVENTION

**FINDING:** Louisiana's program includes management measures in conformity with the 6217(g) guidance.

**RATIONALE:** In the program submittal, Louisiana describes several existing programs and activities that implement the components of this management measure. These include the Louisiana Cooperative Extension Service's programs, demonstrations and outreach activities related to the implementation of best management practices for lawns and gardens, and the Home*A*Syst program, a public education and outreach program to distribute information on pollution prevention to urban consumers.

## F. ROADS, HIGHWAYS, AND BRIDGES

**FINDING:** For federally and State funded roads, highways and bridges, Louisiana's program includes management measures in conformity with the 6217(g) guidance, except for the operation and maintenance and runoff systems management measures. For local roads, highways and bridges subject to the coastal use permit program, Louisiana's program includes management measures in conformity with the 6217(g) guidance, except for the construction site erosion and sediment and chemical control measures. Louisiana's program includes enforceable policies and mechanisms to ensure implementation, except for local roads, highways and bridges outside of the area subject to the coastal use permit program. Louisiana has identified backup enforceable

policies and mechanisms, but has not yet demonstrated the ability of these authorities to ensure widespread implementation throughout the 6217 management area.

**CONDITION:** Within three years, Louisiana will include in its program management measures for federally and state funded roads highways and bridges in conformity with the 6217(g) guidance for the operation and maintenance and runoff systems measures. Within three years, the State will include in its program management measures for local roads, highways and bridges subject to the coastal use permit program in conformity with the 6217(g) guidance for the construction site erosion and sediment and chemical control measures. Within three years, for local roads, highways and bridges outside of the area subject to the coastal use permit program, the State will include in its program management measures in conformity with the 6217(g) guidance for all of the roads, highways and bridges management measures.

Within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the management measures for roads, highways and bridges that are located in the 6217 management area but are outside of the area subject to the coastal use permit program.

**RATIONALE:** Louisiana's program includes management measures for planning, siting and development, bridges, and construction site controls for federally and State funded roads, highways and bridges. The Louisiana Department of Transportation and Development (LDOTD) uses American Association of State Highway Transportation Officials sediment control guidelines and its own standard contract specifications, which require protection of waters and drainageways, erosion and sediment controls, preconstruction conferences, and control of construction fuels and chemicals. However, Louisiana's program does not include management measures for either the operation and maintenance or runoff systems for roads, highways and bridges.

The LDOTD has developed standard contract plans and specifications, requires surety construction bonds, and has inspection and stop work authority to assure implementation of the planning, siting, and development, bridges, and construction site erosion and sediment and chemical control management measures for its projects.

The *Coastal Use Guidelines* for linear facilities (e.g. roads, highways and bridges) require that these facilities be "planned, designed, located and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow and water quality...." However, the *Coastal Use Guidelines* do not include specific measures to control erosion, sediment, and chemicals during construction of roads, highways and bridges.

The Coastal Use Permit program implements the planning, siting, and development and bridges measures and regulates all construction activities for new road, highway and bridge development, except that it applies only within a limited area. For areas outside of this jurisdiction, Louisiana has identified a back-up enforceable authority, (LAC Title 43, Part I, Section 723(B)(2)(b))), and the State's water quality standards (LAC Title 33, Part IX, Chapter 11), but has not demonstrated the ability of these authorities to ensure the widespread implementation of the roads, highways and bridges management measures throughout the 6217 management area (see the discussion of these authorities in the new development and site development section above).

## V. MARINAS AND RECREATIONAL BOATING

**FINDING:** Louisiana's program includes management measures in conformity with the 6217(g) guidance for siting and design, except that it does not include management measures for storm water runoff and fueling station design. Louisiana's program includes management measures in conformity with 6217(g) measures for marina and boat operation and maintenance, except for petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation. Louisiana's program includes enforceable policies and mechanisms to ensure implementation of the measures, except for petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation. Louisiana has identified backup enforceable policies and mechanisms to implement the petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation management measures, but the State has not yet demonstrated the ability of these authorities to ensure implementation throughout the 6217 management area.

**CONDITION:** Within two years, Louisiana will include in its program management measures in conformity with the 6217(g) measures for storm water runoff, fueling station design, petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation. Within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the management measures for petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation.

**RATIONALE:** The *Coastal Use Guidelines* include measures to: site and design marinas to avoid obstruction of water circulation; submit information on water regimes including water quality, circulation, and flow; avoid generally and specifically adverse impacts to wetlands, submerged aquatic vegetation and shellfish beds; and use non-structural shoreline stabilization or ensure that structural controls are used to avoid introduction of pollutants and toxic materials. However, the State lacks specific measures for storm water runoff and fueling station design. As acknowledged in the program submittal, Louisiana's program does not include measures in conformity with 6217(g) measures or specific enforceable policies and mechanisms for marina and boat operation and maintenance for petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation. The State proposes to complete development of an approved list of BMPs for marinas and boatyards based on the management measures and associated practices in the 6217(g) guidance.

As described previously, the Coastal Use Permitting Program provides an enforceable policy and mechanism to ensure implementation of the marina siting and design management measures. The Coastal Use Permitting Program can also be used to implement some of the marina and boat operation and maintenance management measures by requiring that the BMPs for these measures are adhered to as conditions of the coastal use permit issuance. The BMP list for each management measure will be made a part of coastal use permit applications as required conditions for permit approval. Compliance with permit conditions will be ensured by periodic monitoring by State field investigations staff. The Louisiana Water Control Law and State Sanitary Code provide back-up authorities that can be used for the petroleum control, boat cleaning, maintenance of sewage facilities, and boat operation management measures.

As described in the program submittal, Louisiana could further improve implementation of both the siting and design and operation and maintenance management measures through adoption of

the proposed *Louisiana 6217 Best Management Practices for Marinas and Recreational Boating*. We encourage the State to complete development of this document and formally adopt it for use in reviewing permits for new and expanding marinas under the coastal use permit program and for use at existing marinas in order to ensure compliance with state water quality and sanitary code provisions.

## VI. HYDROMODIFICATION

**FINDING:** Louisiana's program includes management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation, except the management measures and enforceable policies and mechanisms apply only to a limited area and the State's program does not include: (1) a process to improve surface water quality and restore instream and riparian habitat through the operation and maintenance of existing modified channels; and (2) a process to identify and develop strategies to solve existing nonpoint source problems caused by streambank or shoreline erosion that do not come up for review under existing permit authorities. For areas outside of the area subject to control by the Coastal Use Permit Program, Louisiana has identified backup enforceable policies and mechanisms, but has not yet demonstrated the ability of these authorities to ensure widespread implementation throughout the 6217 management area. Louisiana has provided sufficient justification to support a categorical exclusion for dams within the State's existing coastal management area.

**CONDITION:** Within three years, Louisiana will include in its program management measures in conformity with the 6217(g) guidance for the physical and chemical characteristics of surface waters, instream and riparian habitat, and eroding streambanks and shorelines measures within the State's existing coastal zone. Within one year, Louisiana will develop a strategy (in accordance with Section XIV, page 17) to implement the management measures for hydromodification in areas outside of the area subject to the coastal use permit program.

**RATIONALE:** Louisiana requires Coastal Use Permits for new channelization activities, modification of existing channels, new streambank and shoreline stabilization projects, dredge-and-fill activities in wetlands, and other marsh management activities within its coastal zone. The *Coastal Use Guidelines* require that permits be conditioned to avoid to the maximum extent practicable the following impacts: destruction or adverse alteration of streams, protective coastal features, and biologically valuable areas. Projects involving dredge-and-fill must be designed and constructed to reduce shoreline erosion. Nonstructural methods of shore protection are to be used to the maximum extent practicable. Best management practices will be incorporated as permit conditions into all appropriate permits.

The State's program contains management measures for new channelization and channel modification projects, but does not contain a process to identify opportunities to improve surface water quality and restore instream and riparian habitat through operation and maintenance of existing modified channels.

Louisiana has provided sufficient justification for its proposed exclusion from the management measures for dams <u>within the existing coastal management area</u>. There are five structures meeting the size requirements for dams in the existing coastal zone and none are located on any natural drainage channel. There is no active manipulation of water releases from any of the

structures. There are no associated stream segments that are not fully supporting their designated uses, and the State's water quality inventory does not list any of the dams as contributing to the impairment of surface waters. Neither do they impede or block migration routes of any fish.

The *Coastal Use Guidelines* require the use of sound engineering practices for shoreline and streambank structural projects. Louisiana states that it will use existing authorities under the coastal use permit program to establish setbacks to minimize land disturbance to streambanks and shorelines and direct upslope drainage from development away from banks and slopes to avoid accelerating bank erosion. The State's program does not have a process to identify and develop strategies to solve existing nonpoint problems caused by streambank or shoreline erosion that do not come up for review under existing permit authorities.

For areas outside the coastal zone, Louisiana has identified back-up enforceable policies and mechanisms for implementing the management measure, but has not yet demonstrated the ability of these authorities to ensure implementation throughout the 6217 management area (see discussion of these authorities in the new development and site development section above).

## VII. WETLANDS, RIPARIAN AREAS AND VEGETATED TREATMENT SYSTEMS

**FINDING:** Subject to the conditions in the boundary section, Louisiana's program includes management measures for protection of wetlands and riparian areas in conformity with the 6217(g) guidance. The program includes enforceable policies and mechanisms to ensure implementation within the existing coastal management area.

**CONDITION:** Within three years, the State will develop new authorities or modify existing authorities to ensure implementation of the management measure for protection of wetlands and riparian areas throughout the 6217 management area.

**RATIONALE:** Louisiana's *Coastal Use Guidelines* include numerous general and specific requirements for the protection of wetlands and riparian areas, in conformity with the 6217(g) guidance. The Coastal Use Permit Program also requires mitigation for any unavoidable impacts to coastal wetlands. As stated previously, the Coastal Use Permitting Program does not apply outside of the existing coastal management area.

In addition, the Louisiana Natural and Scenic Rivers Systems Act includes measures to protect wetlands and riparian areas (e.g. prohibits channelization; channel realignment; clearing and snagging; impoundments; and commercial clear cutting of timber within 100 feet of the low water mark). There are nine Scenic Rivers within the existing coastal management area and fifty-one streams or stream segments encompassing over 1,500 miles throughout the State of Louisiana. Besides the prohibited activities listed above, any other activity that may have a direct, significant, ecological impact on the stream or its tributaries or distributaries is subject to regulation by permit by the Louisiana Department of Wildlife and Fisheries. Based on the information included in the program submittal, the Natural and Scenic Rivers System may not cover all wetlands that serve a significant nonpoint source abatement function outside of the existing coastal management area.

Louisiana's antidegradation policy includes a requirement that "Any new, existing, or expanded point source or nonpoint source discharging into state waters ... provide the necessary level of waste treatment to protect state waters as determined by the administrative authority. Further, the highest statutory and regulatory requirements shall be achieved for all existing point sources and best management practices (BMPs) for nonpoint sources" (LAC Title 33, Part IX, Section 1109(A)(2)). In addition, the State is developing a State Wetlands Conservation and Management Plan (SWCMP) for non-coastal wetlands. NOAA and EPA encourage Louisiana to use the SWCMP as a tool to further assist in protecting wetlands and riparian areas that serve a significant nonpoint source abatement function.

Management measures promoting conservation and restoration of wetland and riparian areas are implemented through the State's Coastal Wetlands Conservation and Restoration Act (LA R.S. 49:214.1-214.5), which provides for the identification, development and implementation of priority wetlands projects to conserve, enhance and restore coastal wetlands statewide (restoration plan) and establishes a permanent funding source (approximately $25 million) to implement these priority restoration projects throughout the State. This program complements the Federal coastal wetlands conservation and restoration program that is being implemented pursuant to the Coastal Wetlands Planning and Restoration Act of 1990 which has been funded at approximately $70 million.

Management measures promoting vegetative treatment systems are implemented through voluntary use of BMP's. The State's BMP manuals for stormwater and hydromodification activities both emphasize the use of vegetated treatment systems. The State also promotes the use of vegetated treatment systems through public outreach and education programs, and conditioning of permits that are required for activities in the coastal zone.

## VIII. ADMINISTRATIVE COORDINATION

**FINDING:** Louisiana's program does not include mechanisms to improve coordination among State agencies and between State and local governments.

**CONDITION:** Within two years, Louisiana will include in its program mechanisms, such as the proposed Memoranda of Agreement (MOAs), to ensure administrative coordination among State agencies and between State and local governments.

**RATIONALE:** Louisiana has proposed to develop approximately sixteen MOAs that outline coordination between divisions within State offices, between State departments and between State and federal agencies with existing responsibilities applicable to the Louisiana coastal nonpoint program.

## IX. PUBLIC PARTICIPATION

**FINDING:** Louisiana's program provides opportunities for public participation in the development and implementation of the coastal nonpoint program.

**RATIONALE:** The program submittal describes several activities that provide opportunities for public participation in the development and implementation of Louisiana's coastal nonpoint

program. Members of the public were invited to participate in Louisiana's Coastal Nonpoint Interagency Committee and subcommittees for each source category. Louisiana also conducted an extensive public education and outreach campaign targeted at the public and affected interests. Activities included updates in various monthly and bi-monthly publications and presentations by staff from the Louisiana Department of Natural Resources/Coastal Management Division staff at public meetings and seminars. In addition, contracts between LDNR and LDEQ, LDHH, LDOTD, Louisiana Department of Agriculture and Forestry, Louisiana Cooperative Extension Service, and Louisiana State University Sea Grant Legal have included development of elements of public education and outreach. Louisiana also held a series of four regional public education/outreach meetings to inform the public and to solicit public input. Louisiana provided a 30-day public comment period on the draft-final program submittal and received and responded to eleven comment letters.

## X. TECHNICAL ASSISTANCE

**FINDING:** Louisiana has included programs that will provide technical assistance to local governments and the public for implementing the management measures.

**RATIONALE:** The program submittal outlines technical assistance efforts, including local government and advisory committee meetings, workshops, seminars and conferences. While Louisiana has identified various technical assistance mechanisms for program development, NOAA and EPA encourage Louisiana particularly to develop mechanisms that will provide technical assistance to local governments and the public for implementing the coastal nonpoint program. Louisiana plans to undertake demonstration projects and develop technical guidance materials such as model ordinances for stormwater management.

## XI. ADDITIONAL MANAGEMENT MEASURES

**FINDING:** Louisiana's program provides for the implementation and continuing revision of additional management measures applicable to critical coastal areas and to cases where 6217 (g) measures are fully implemented but water quality threats or impairments persist.

**RATIONALE:** As part of the process to determine critical coastal areas, Louisiana will consider the effects of implementing the (g) guidance management measures. If implementation of the initially identified BMPs appears to be inadequate for attaining water quality goals, then additional management measures, additional BMPs and/or alternative implementation strategies will be evaluated by the interagency committee and subcommittee members.

## XII. CRITICAL COASTAL AREAS

**FINDING:** Louisiana's program includes a process for the continuing identification of critical coastal areas adjacent to impaired and threatened coastal waters.

**RATIONALE:** Louisiana has proposed to map "threatened or impaired" coastal waters. Once these impaired waterbodies are identified, the State will identify those areas within the 6217 management area in which new or expanding land uses may cause or contribute to the impairment of coastal water quality. Louisiana identified agriculture and urban development as the primary land use categories for investigation as data exists for these land uses to document changes in urban, suburban and agricultural land uses. Once the land use patterns and trends are documented, Louisiana intends to map a critical coastal management zone inland of the critical coastal shoreline.

## XIII. MONITORING

**FINDING:** Louisiana's program does not include a plan to assess over time the success of the management measures in reducing pollution loads and improving water quality.

**CONDITION:** Within one year, Louisiana will finalize and include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

**RATIONALE:** Louisiana proposes to develop within the next twelve months a "detailed monitoring plan designed to document the implementation of Best Management Practices (BMPs) within the 6217 management area in order to improve water quality." Louisiana has thus not yet formulated its strategy to assess over time the success of the management measures in reducing pollution loads and improving water quality. The State intends to build upon existing oversight authorities and monitoring networks through interagency coordination and the establishment of memoranda of agreement (MOAs). The State emphasizes its plan to use permit information, enforcement investigations, follow-up investigations, and quarterly monitoring to obtain BMP information.

Louisiana should include in its plan information regarding the number and location of monitoring stations, the types and frequency of water quality data being collected, and the analytic approaches that will be employed in conjunction with existing monitoring efforts to assess the success of management measures in achieving water quality objectives. The State should include some inexpensive tracking of management measure implementation in conjunction with water quality monitoring, as such information is needed to assess the success of management measures in achieving water quality objectives. The current proposal focuses on tracking individual BMPs, but the State is strongly encouraged to address the need for tracking and reporting the implementation of management measures which are often combinations of BMPs.

## XIV. STRATEGY AND EVALUATION FOR BACK-UP AUTHORITIES

Within one year, Louisiana will develop a strategy to implement the management measures for pesticide management, new development and site development, watershed protection and existing development, construction site erosion and sediment and chemical control, roads, highways and bridges, petroleum control, boat cleaning, maintenance of sewage facilities, boat operation, and hydromodification throughout the 6217 management area. This strategy will include a description and schedule for the specific steps the State will take to ensure implementation of the management measures, describe how existing or new authorities can be

used to ensure implementation where voluntary efforts are unsuccessful, and identify measurable results which, if achieved. will demonstrate the State's ability to achieve widespread implementation of the management measure using the described approach.

Louisiana will also develop and apply credible survey tools to demonstrate the ability of the State's approach to achieve widespread implementation of these management measures. The use of credible assessment techniques is necessary in order for NOAA and EPA to evaluate, at the end of the three year period described in the March 16, 1995 guidance issued by NOAA and EPA entitled *Flexibility for State Coastal Nonpoint Programs*, whether the State's approach has been successful or whether new, more specific authorities will be needed.