

# DEPARTMENT OF THE ARMY PERMIT

Permittee: Coastal Protection and Restoration Authority

**OCT 23 2012**

Permit No. MVN-2012-0922-EFF

Issuing Office: New Orleans District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Excavate and deposit fill to construct the Shell Island Barrier Island Restoration Project (BA 110/111), in accordance with the drawings attached in sixty-three sheets dated February 1, 2012.

Project Location: In Plaquemines Parish, south of Highway 23, within Bastian Bay, at the Gulf of Mexico, near Empire, Louisiana.

## Permit Conditions:

### General Conditions:

1. The time limit for completing the work authorized ends on **OCT 31, 2017**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions: See Attached.**

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.

- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
- 5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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

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

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

X Chad M. C...  
 (PERMITTEE) CPRA Project Manager

X 10-11-2012  
 (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Michael V Farabee  
 Michael V Farabee, Chief Eastern Evaluation Section

October 23, 2012  
 (DATE)

for Edward R. Fleming, District Commander

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
 (TRANSFEREE)

\_\_\_\_\_  
 (DATE)

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7. This authorization does not obviate the permittee from obtaining any necessary approvals from other pertinent federal, state, and/or local authorities.
8. Construction activities shall be confined to the proposed work areas shown on the attached drawings. Mechanized land clearing or filling in wetlands for access and/or project construction, unless expressly identified on the attached drawings, is not authorized. Any alterations or changes in scope of the proposed project not covered under this authorization would require a separate Department of the Army permit review and decision, prior to commencing that work.
9. The permittee shall assure that any contractors and/or workers associated with construction of the permitted project are equally aware of the conditions and restrictions associated with this approval.
10. The permittee is aware that future site visits and inspections may be conducted to the project area by this office and/or other resource agencies in order to assess project compliance with this authorization and requirements associated herewith.
11. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
12. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States. The proposed work shall be coordinated with the US Coast Guard, in order to address and potential navigation issues associated with project construction.
13. You must install and maintain, at your expense, any safety lights, signs and signals prescribed by the US Coast Guard, through regulations or otherwise, on your authorized facilities.
14. If the proposed project, or future maintenance work, involves the use of floating construction equipment (barge mounted cranes, barge mounted pile driving equipment, floating dredge equipment, dredge discharge pipelines, etc.) in the waterway, you are advised to notify the US Coast Guard so that a Notice to Mariners, if required, may be prepared. Notification, with a copy of your permit approval and drawings, should be mailed to the US Coast Guard, Sector New Orleans Command Center, 200 Hendee Street, New Orleans, Louisiana 70114, about 1 month before you plan to start work. Telephone inquiries can be directed to (504) 365-2281.

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15. The Chitimacha Tribe of Louisiana has stated that the project area is part of the aboriginal Chitimacha homelands. If during the course of work at the site, prehistoric and/or historic aboriginal cultural materials are discovered, the applicant will contact the Chitimacha Tribe of Louisiana at Post Office Box 661, Charenton, LA 70523, and the Army Corps of Engineers, New Orleans District (CEMVN) Regulatory Branch. CEMVN, Regulatory Branch will initiate the required federal, state, and tribal coordination to determine the significance of the cultural materials and the need, if applicable, for additional cultural resource investigations.
16. To the greatest extent, the permittee shall avoid negative impacts to existing vegetated wetlands at the site. Disturbance and/or rutting of existing vegetated wetlands during mobilization and/or construction activities shall be restored to pre-existing elevations at the earliest practicable time frame. The use of timber mats may be utilized where feasible, in order to avoid and minimize impacts to marsh.
17. To the greatest extent, the permittee shall avoid impacts to existing natural shorelines. Any rutting and/or ground disturbance in these areas must be restored immediately to pre-project conditions.
18. If archaeological materials and/or human remains are discovered during ground disturbing activities you shall cease and desist all activities in the project area and contact this office and Mr. Dennis Jones of the Louisiana Office of Cultural Development, Division of Archaeology at (225) 342-8160.
19. Our Real Estate Division has indicated that your project is located in an area over which the federal government holds real estate interest. No work may be performed under this permit until a real estate instrument is issued by our Real Estate Division. If you require further information regarding real estate matters, call (504) 862-1701. The real estate instrument will be initiated by our Real Estate Division without further action required on your part.
20. The permittee depicts excavation and stockpiling immediately adjacent to the Empire Waterway. Therefore, any effects to the waterway shall be restored to a minimum of pre-project conditions, upon completion of construction activities.
21. Any damage to the levees resulting from the applicant's activities will be repaired at the permittee's expense.
22. The proposed work shall not restrict the Levee District/Parish's maintenance operations or any potential flood fight activities at the levees, nor shall it obstruct or impede inspection access.
23. Earthen material placed on the levee slope shall be fertilized and seeded to promote new grass growth. In addition, all other disturbed areas on the levees resulting from the project must be restored to its original condition.

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24. Any materials placed onto the levees must be removed from the area upon completion of the project and the area must be returned to its original state of existence or better.
25. Should changes in the location or section of the existing levees and/or river, or in the generally prevailing conditions in the vicinity, be required in the future in the public interest, the permittee shall make changes in the project concerned, or in the arrangement thereof, as may be necessary to satisfactorily meet the situation and shall bear the cost thereof.
26. The proposed dredging work within the Mississippi River would be located within areas known to be inhabited by the Pallid sturgeon (Scaphirhynchus albus). The cutterhead shall remain completely buried in the bottom material during dredging operations. If pumping water through the cutterhead is necessary to dislodge material or to clean the pumps and/or cutterhead, etc., the pumping rate shall be reduced to the lowest possible until the cutterhead is at mid-depth, where the pumping rate can then be increased. During dredging, the pumping rates should be reduced to the slowest speed feasible while the cutterhead is descending to the channel bottom. The permittee shall contact this office (504-862-2766) and the US Fish and Wildlife Service (USFWS) Lafayette Field office (337-291-3100), with any further questions about the Pallid sturgeon or should a sturgeon be observed. The permittee shall cease work if a sturgeon is observed within the subject area and until consultation has been finalized with this office and the USFWS.
27. The proposed island restoration work would occur within areas that are known to be inhabited by the West Indian manatee (Trichechus manatus). The permittee shall adhere to the GUIDELINES FOR ACTIVITIES IN PROXIMITY TO MANATEE AND THEIR HABITAT, attached to this authorization as (**Attachment I**), during all phases of in-water work for the duration of the project as well as any future in-water maintenance work. The permittee shall contact this office (504-862-2766) and the USFWS Lafayette Field Office of Louisiana (337-291-3100), with any further questions about the West Indian manatee, the subject guidelines, or should a manatee be sighted. The permittee shall cease work if a manatee is observed within the subject area and until consultation has been finalized with this office and the USFWS.
28. The proposed project occurs within an area impacted by the Deepwater Horizon Oil Spill in the summer of 2010 and activities such as yours could potentially re-suspend oiled sediments that may be located in the area. It is also noted that cleanup crews associated with the US Coast Guard's Deepwater Horizon Response are potentially working in multiple sites located throughout the Louisiana coastal area. In order to coordinate and mitigate potential re-suspension of oiled sediments, adverse impacts to fish and wildlife species, and safety issues related to cleanup operations; the permittee shall contact and coordinate with LT David R. Simonson, US Coast Guard Deepwater Horizon Response (504-252-8748 or [david.r.simonson@uscg.mil](mailto:david.r.simonson@uscg.mil)) , prior to commencement of work.

## **GUIDELINES FOR ACTIVITIES IN PROXIMITY TO MANATEES AND THEIR HABITAT**

### **I. General Guidance for In-water Work Activities**

- A. All personnel associated with the project should be informed of the potential presence of manatees, manatee speed zones, and the need to avoid collisions with and injury to manatees. Such personnel instruction should also include a discussion of the civil and criminal penalties for harming, harassing, or killing manatees, which are protected under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973.
- B. All contract and/or construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- C. Temporary signs should be posted prior to and during all construction/dredging activities to remind personnel to be observant for manatees during active construction/dredging operations or within vessel movement zones (i.e., work area), and at least one sign should be placed where it is visible to the vessel operator.
- D. Siltation barriers, if used, should be made of material in which manatees could not become entangled, and should be properly secured and regularly monitored. Barriers should not impede manatee movement.
- E. If a manatee is sighted within 100 yards of the active work zone, special operating conditions should be implemented, including: no operation of moving equipment within 50 feet of a manatee; all vessels should operate at no wake/idle speeds within 100 yards of the work area; and siltation barriers, if used, should be re-secured and monitored. Once the manatee has left the 100-yard buffer zone around the work area on its own accord, special operating conditions are no longer necessary, but careful observations would be resumed.
- F. Any manatee sighting should be immediately reported to the U.S. Fish and Wildlife Service's (Service) Lafayette, Louisiana, Field Office (337/291-3100) and the Louisiana Department of Wildlife and Fisheries (LDWF), Natural Heritage Program (225/765-2821).

### **II. Guidelines to Minimize and/or Avoid Manatee Entrapment**

- A. Pre-construction:

Water control structures, trash rakes, barriers and other devices that may entrap manatees (even temporarily) within a closed waterway could result in harm or death to the entrapped manatee. At least 90 days prior to installing a structure that may be a barrier or impediment to manatee movement, advanced consultation with the Service and the LDWF should occur. When a manatee-accessible waterway is proposed to be closed to manatees (exclusion area), aerial and ground surveys should be conducted to ensure that manatees are not entrapped in a closed system.
- 1. Aerial Survey:

Prior to installing the last section of any barriers (temporary or permanent) that could result in the entrapment of manatees within the waterway, the project proponent should contact the Service and LDWF to determine whether an aerial survey of the proposed exclusion area should be conducted. The extent of the survey area should be identified by the Service and LDWF. Both the Service and LDWF should be contacted to participate in any aerial surveys. It is recommended that the surveys be conducted by helicopter.

2. Waterway Closure:

If no manatees are sighted within the exclusion area, the waterway should be closed off immediately following that survey. If manatees are sighted within the exclusion area, they should be observed to see if they move beyond the proposed barrier. If they do not move out of the waterway within 10 days, the project proponent should consult with the Service and LDWF to determine if the barrier should be put in place. Manatees should not be herded, poked, prodded or harassed in any way to move them along the waterway.

B. Post-construction:

Once the barrier has been installed, the barrier and waterway should be monitored by land once daily for a period of one week to check for the presence of manatees. If manatees are sighted within the exclusion area, the Service (337/291-3100) and LDWF (225/765-2821) should be contacted for further guidance.

III. Guidance for Activities Related to Pipe or Culvert Installation

- A. For pipes and/or culverts installed in areas with potential manatee access, measures that minimize both project installation- and structure-related risks must be adopted to avoid or minimize their effects on manatees and any suitable habitat.
- B. Pursuant to the "General Guidance for In-Water Work Activities", all project-related personnel must be instructed about manatees and measures needed to ensure the manatees' protection during the installation of these structures.
- C. Structures with openings that exceed 8 feet in diameter at both ends and have average water depths of at least three feet, mean low water (MLW), generally do not pose a threat to manatees. Wherever possible, structures (such as box culverts) with these features should be used to reduce the risk of manatees drowning or becoming entrapped in these structures.
- D. Where pipes and culverts between 8 inches and 8 feet in diameter are required, bars or gratings spaced less than 8 inches apart in horizontal, diagonal, or vertical configurations should be placed over the openings to prevent adult manatees and calves from accessing these structures.
- E. Manatees can become stranded in culverts during periods of low tide. Therefore, when planning for new culverts in tidal waters, a minimum 3-foot depth of water in the culvert at low tide stage is recommended.

IV. Guidance for Docks or Other Structures Constructed in or over Submerged Aquatic Vegetation, Marsh, or Mangrove Habitat

- A. Submerged Aquatic Vegetation (SAV)
  - 1. Avoidance – the pier should be aligned so as to minimize the size of the footprint over SAV beds.
  - 2. The height of pier should be a minimum of 5 feet above MHW/OHW as measured from the top surface of the decking.
  - 3. The width of the pier should be limited to a maximum of 4 feet. A turnaround area is allowed for piers greater than 200 feet in length. The turnaround is limited to a section of the pier no more than 10 feet in length and no more than 6 feet in width. The turnaround should be located at the midpoint of the pier.

4. Over-SAV bed portions of the pier should be oriented in a north-south orientation to the maximum extent practicable.
5. If possible, terminal platforms should be placed in deep water, water-ward of SAV beds, or in an area devoid of SAV beds.
6. If a terminal platform is placed over SAV areas and constructed of grated decking, the total size of the platform should be limited to 160 square feet. The grated deck material should conform to the specifications stipulated below. The configuration of the platform should be a maximum of 8 feet by 20 feet. A minimum of 5 feet by 20 feet should conform to the 5-foot height requirement; a 3-foot by 20-foot section may be placed 3 feet above mean high water (MHW) to facilitate boat access. The long axis of the platform should be aligned in a north-south direction to the maximum extent that is practicable.
7. If the terminal platform is placed over SAV areas and constructed of planks, the total size of the platform should be limited to 120 square feet. The configuration of the platform should be a maximum of 6 feet by 20 feet of which a minimum 4-foot-wide by 20-foot-long section shall conform to the 5-foot height requirement. A section may be placed 3 feet above MHW to facilitate boat access. The 3 feet above MHW section should be cantilevered. The long axis of the platform should be aligned in a north-south direction to the maximum extent practicable. If the 3 feet above MHW section is constructed with grating material, it may be 3 feet wide.
8. One uncovered boat lift area is allowed. A narrow catwalk (2-feet-wide if planks are used, 3-feet-wide if grating is used) may be added to facilitate boat maintenance along the outboard side of the boat lift and a 4-foot-wide walkway may be added along the stern end of the boat lift, provided all such walkways are elevated 5 feet above MHW. The catwalk should be cantilevered from the outboard mooring pilings (spaced no closer than 10 feet apart).
9. Pilings should be installed in a manner which will not result in the formation of sedimentary deposits ("donuts" or "halos") around the newly installed pilings. Pile driving is the preferred method of installation, but jetting with a low pressure pump may be used.
10. The spacing of pilings through SAV beds should be a minimum of 10 feet on center.
11. The gaps between deck boards should be a minimum of ½ inch.

#### B. Marsh

1. The structure should be aligned so as to have the smallest over-marsh footprint as practicable.
2. The over-marsh portion of the dock should be elevated to at least 4 feet above the marsh floor.
3. The width of the dock should be limited to a maximum of 4 feet. Any exceptions to the width must be accompanied by an equal increase in height requirement.

#### C. Mangroves

1. The width of the dock should be limited to a maximum of 4 feet.
2. Mangrove clearing should be restricted to the width of the pier.
3. The location and alignment of the pier should be through the narrowest area of the mangrove fringe.