This notice of authorization must be conspicuously displayed at the site of work.

United States Army Corps of Engineers

A permit to perform work authorized by statutes and regulations of the Department of the Army

67 INSHORE REEFS, LOCATED WITHIN THE MISSISSIPPI SOUND,

at JACKSON, HARRISON AND HANCOCK COUNTIES, MISSISSIPPI

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

has been issued to ATTENTION: MR. KERWIN CUEVAS on FEBRUARY 20, 2013

Address of Permittee 1141 BAYVIEW AVENUE, STE 101 BILOXI, MISSISSIPPI 39530

Permit Number

SAM-2011-01777-SPG

FOR THE District Commander

Damon M. Young, P.G.
Team Leader, Mississippi
South Branch,
Regulatory Division

ENG FORM 4336, Jul 81 (33 CFR 320-330) EDITION OF JUL 70 MAY BE USED (Proponent: CECW-0)

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

REPLY TO
ATTENTION OF

February 20, 2013

Coastal Branch
Regulatory Division

SUBJECT: Department of the Army Nationwide Permit Number SAM-2011-01777-SPG, Mississippi Department of Marine Resources

Mississippi Department
of Marine Resources
Attention: Mr. Kerwin Cuevas
1141 Bayview Avenue
Biloxi, Mississippi 39530

Dear Mr. Cuevas:

This letter is in response to your February 4, 2013 request, for a Department of the Army (DA) verification to place cultch material onto existing oyster reefs for the purpose of enhancement and oyster reseeding. The project has been assigned number SAM-2011-01777-SPG, which should be referred to in all future correspondence with this office. The project includes 67 inshore reefs, located within the Mississippi Sound, Jackson, Harrison and Hancock Counties, Mississippi. Specific GPS coordinates of the 67 reef locations are included in Enclosure 1 of this permit.

DA permit authorization is necessary because your project would involve work in waters of the United States under our regulatory jurisdiction.

Based upon the information and plans you provided, we hereby verify that the work described above, which shall be performed in accordance with the enclosed plan, is authorized by Nationwide Permit (NWP) 4, *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities*. This letter verifies the proposed activity is authorized by NWP 4 in accordance with 33 CFR Part 330 of our regulations.

The following Regional Conditions apply to your project. You must comply with all terms and conditions associated with NWP 4, as well as with the special conditions listed below:

a. You shall comply with all the terms and conditions of the Mississippi Department of Environmental Quality's Section 401 Water Quality Certification for the NWP Program dated March 23, 2012.

b. The permittee shall comply with all terms and conditions of the Mississippi Department of Marine Resources' Coastal Consistency Management for the NWP Program dated March 23, 2012.

c. Best management practices shall be implemented to adequately protect disturbed wetlands and stream banks, minimizing erosion, sedimentation, turbidity and damage to adjacent waters of the United States. Appropriate erosion and sediment control measures must be installed and maintained in effective operating condition during construction and shall remain in place until permanent stabilization measures have been completed and have become fully effective.

d. 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 U.S. Army Corps of Engineers, Mobile District (Corps), 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.

e. All structures must be properly designated by appropriate signage and not constitute a navigation hazard.

f. Should any indications of threatened or endangered species be encountered during the project activities, work shall cease and the U.S. Fish and Wildlife Service and the Corps office shall be consulted immediately.

g. Should artifacts or archaeological features be encountered during project activities, work shall cease and the Mississippi State Historical Preservation Officer and the Corps shall be consulted immediately.

h. No material should be discharge outside of the existing footprint or previously authorized reef dimensions.

i. All persons/contractors involved in this permitted activity shall be provided copies of this permit as well as copies of the Regional and General Conditions of NWP 4. A copy of these documents shall remain on-site at all times during construction.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWP will expire **March 18, 2017.** If you commence or are under contract to commence this activity before the date the relevant NWP is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP permit. The statements contained herein do not convey any property rights, or any exclusive privileges and does not authorize any injury to property or obviate the requirements to obtain other local, State or Federal assent required by law. Nothing in this letter shall be construed as excusing you from compliance with other Federal, State or local statutes, ordinances or regulations which may affect this work.

Enclosed you will find a Notification of Administrative Appeal Options and Process fact sheet and Request for Appeal (RFA) form. If you choose to object to certain terms and conditions of the permit, you must follow the directions provided in Section 1, Part D and submit the completed RFA form to the letterhead address.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria under 33 CFR Part 331.5, and that it has been received by the District office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the letterhead address by within 60 days of the date of this letter. It is not necessary to submit an RFA form to the District office, if you do not object to the determination enclosed with this letter.

Please note, NWP General Condition 26 (Compliance Certification) requires that every permittee who has received NWP verification must submit a signed compliance certification. The enclosed Compliance Certification form must be completed and returned to the letterhead address within five days of completion of the work authorized, to satisfy this requirement.

Please contact me at (251) 694-3772, or by e-mail at sandy.p.gibson@usace.army.mil if you have any questions. For additional information about our Regulatory Program, visit our web site at: www.sam.usace.army.mil/Missions/Regulatory.aspx. Please take a moment to complete the enclosed customer satisfaction survey. Your responses are appreciated and will allow us to improve our services.

Sincerely,

Damon M. Young, P.G.
Team Leader, Mississippi South Branch
Regulatory Division

Enclosures

When the structures or work authorized by this nationwide permit (SAM-2011-01777-SPG), are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) (DATE)

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 FEBRUARY 2013

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MOBILE DISTRICT, DEPARTMENT OF MARINE RESOURCES, SAM-2011-01777-SPG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MISSISSIPPI County/parish/borough: HANCOCK/HARRISON/JACKSON City: N/A
Center coordinates of site (lat/long in degree decimal format): Lat. N/A° N, Long. N/A° W.
Universal Transverse Mercator: Zone 16 NAD83 Datum

Name of nearest waterbody: MISSISSIPPI SOUND

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: MISSISSISSI SOUND

Name of watershed or Hydrologic Unit Code (HUC): 3170009

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: 22 NOVEMBER 2011
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Are "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☒ Waters subject to the ebb and flow of the tide.
☒ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are no "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**

   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

   ☐ TNWs, including territorial seas
   ☐ Wetlands adjacent to TNWs
   ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   ☐ Non-RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   ☐ Impoundments of jurisdictional waters
   ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: variable linear feet: width (ft) and/or acres.
   Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: 1987 Delineation Manual
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]

   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

---

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: **MISSISSIPPI SOUND.**

Summarize rationale supporting determination: The Mississippi Sound is a tidally-influenced waterbody which has historically and is currently being used for intra- and interstate commerence.

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) **General Area Conditions:**
Watershed size: [redacted]
Drainage area: [redacted]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) **Physical Characteristics:**
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through [redacted] tributaries before entering TNW.

Project waters are [redacted] river miles from TNW.
Project waters are [redacted] river miles from RPW.
Project waters are [redacted] aerial (straight) miles from TNW.
Project waters are [redacted] aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .

---

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain: .
- ☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: [redacted].

Primary tributary substrate composition (check all that apply):

☐ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: [redacted]
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: [redacted]
Estimate average number of flow events in review area/year: [redacted]
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: [redacted]. Characteristics: .

Subsurface flow: [redacted]. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

- ☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .
Identify specific pollutants, if known: .

---

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**
- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: [redacted]

Characteristics: .

Subsurface flow: [redacted]. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are [redacted] river miles from TNW.

Project waters are [redacted] aerial (straight) miles from TNW.

Flow is from: [redacted].

Estimate approximate location of wetland as within the [redacted] floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**
- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: [redacted]

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
see summary below			

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet 2 width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: The RPW is Tiawasee Creek, which flows into Rock Creek, which flows into D'Olive Bay, which flows into Mobile Bay, a TNW as shown on the USACE Navigation Study.
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

---

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Department of Marine Resources .
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☒ Corps navigable waters' study: .
- ☒ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: MS-BAY ST. LOUIS.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro Software.
  - or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: MISSISSIPPI DEPT. OF MARINE RESOURCES	File Number: SAM-2011-01777-SPG	Date: 4/20/2013
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
XX	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
MR. DAMON M. YOUNG, P.G. **CESAM-RD-C-M** **U.S. ARMY CORPS OF ENGINEERS** **POST OFFICE BOX 2288** **MOBILE, ALABAMA 36601-2228** **(251) 690-2658**	

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

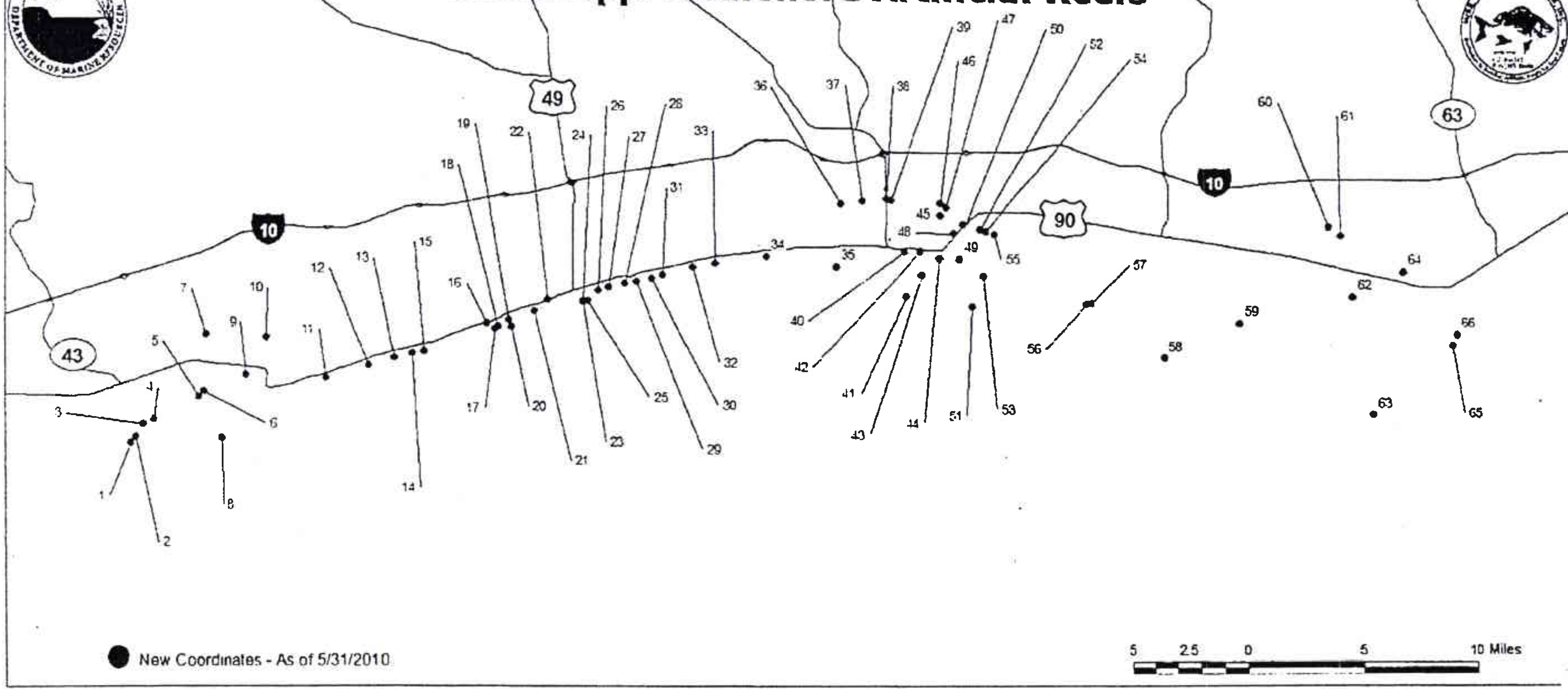
Signature of appellant or agent.	Date:	Telephone number:

Comparison of NWP maps and MRRG maps for Nearshore Artificial Reefs			
ID #	Reef Name	Coordinates	Review Notes
1	Oak Street Reef	30 16.17, -89 22.34	Not on permit map; on our map
2	St. Claire Reef	30 16.38, -89 22.16	Not on permit map; on our map
3	Waveland Rubble Reef 2	30 16.847, -89 21.882	
4	Monroe Street Reef	30 17.05, -89 21.47	Not on permit map; on our map
5	American Legion Launch Reef	30 17.89, -89 19.8	
6	American Legion Pier Reef	30 18.106, -89 19.605	
7	Cedar Point Reef	30 20.21, -89 19.54	Not on permit map; on our map
8	Square Handkerchief Key	30 16.345, -89 18.901	Different lat/long on permit map than on our map; also permit indicates 2 reef sites here
9	BSL Train Bridge Reef	30 18.707, -89 18.009	Not on permit map; on our map
10	Mellini Point Reef	30 20.105, -89 17.244	Not on permit map; on our map
11	Pass Harbor Pier Reef	30 18.605, -89 14.973	Not on permit map; on our map
12	Lang Ave. Reef	19.068, -89 13.364	Not on permit map; on our map
13	Japonica Drive Reef	30 19.373, -89 12.4	Not on permit map; on our map
14	Emerald Street Reef	30 19.538, -89 11.707	Not on permit map; on our map
15	Walmart Reef	30 19.64, -89 11.264	Not on permit map; on our map
16	Jeff Davis Ave. Pier Reef	30 20.682, -89 8.849	Not on permit map; on our map
17	Long Beach Harbor Jetty Reef	30 20.508, -89 8.551	
18	Long Beach Harbor Pier Reef	30 20.572, -89 8.413	
19	USM Reef*	30 20.832, -89 8.019	
20	Long Beach East Reef	30 20.583, -89 7.915	
21	Fournier Ave. Reef	30 21.173, -89 7.024	Different lat/long on permit map than on our map
22	Charles Walker Pier	30 21.585, -89 6.512	Different lat/long on permit map than on our map

23	Urie Pier North	30 21.559, -89 5.175	Not on permit map; on our map
Comparison of NWP maps and MRRG maps for Nearshore Artificial Reefs (Continued)			
24	Urie Pier South	30 21.519, -89 5.168	Not on permit map; on our map
25	Moses Pier Reef	30 21.564, -89 5.004	
26	Thornton Ave. Reef	30 21.98, -89 4.592	Different lat/long on permit map than on our map
27	Kelly Ave. Reef	30 22.09, -89 4.192	Different lat/long on permit map than on our map
28	Hewes Avenue Reef	30 22.218, -89 3.583	Not on permit map; on our map
29	VA Hospital Reef	30 22.298, -89 3.137	Not on permit map; on our map
30	Courthouse Road Pier Reef	30 22.397, -89 2.537	
31	Tegarden Reef	30 22.565, -89 2.132	Different lat/long on permit map than on our map
32	Naval Hospital Reef	30 22.831, -89 0.994	Different lat/long on permit map than on our map
33	Legacy Towers Reef	30 22.998, -89 0.201	Different lat/long on permit map than on our map
34	Broadwater Harbor Reef	30 23.237, -88 58.221	Different lat/long on permit map than on our map
35	Whitehouse Reef	30 22.872, -88 55.572	
36	Keesler Harbor Reef	30 25.223, -88 55.367	
37	Goat Island Reef	30 25.347, -88 54.585	Different lat/long on permit map than on our map
38	d'Iberville Marina Reef*	30 25.353, -88 53.469	Not on permit map; on our map
39	d'Iberville Bridge Reef*	30 25.386, -88 53.663	Different lat/long on permit map than on our map
40	Biloxi Harbor Reef	30 23.473, -88 52.979	
41	Keesler Rubble Reef*	30 21.772, -88 52.906	
42	Kuhn Street Pier Reef	30 23.476, -88 52.35	
43	South Deer Island Barge reef	30 22.576, -88 52.255	Not on permit map; on our map

44	Joe Thorton Hull Reef*	30 23.205, -88 51.627	Different lat/long on permit map than on our map
Comparison of NWP maps and MRRG maps for Nearshore Artificial Reefs (Continued)			
45	Spoil Island South Reef	30 24.826, -88 51.577	
46	Fort Bayou Reef	30 25.254, -88 51.569	Not on permit map; on our map
47	Spoil Island North Reef	30 25.118, -88 51.343	
48	Old Highway 90 Bridge Reef West	30 24.168, -88 51.07	Different lat/long on permit map than on our map
49	East Biloxi Channel Reef	30 23.162, -88 50.849	Not on permit map; on our map
50	Old Highway 90 Bridge Reef East	30 24.482, -88 50.684	
51	Katrina Key Reef	30 21.411, -88 50.369	Not on permit map; on our map
52	Ocean Springs Community Pier Reef	30 24.322, -88 50.051	
53	Deer Island North Reef	30 22.56, -88 49.924	
54	Ocean Springs Pier Reef	30 24.231, -88 49.81	Not on permit map; on our map
55	Ocean Springs Harbor Pier Reef	30 24.139, -88 49.475	Not on permit map; on our map
56	Gulf Park Estates Reef	30 21.529, -88 46.059	Not on permit map; on our map
57	Gulf Park Estates Pier Reef	30 21.547, -88 45.874	
58	Bellefontaine Reef	30 19.503, -88 43.072	
59	Graveline Reef	30 20.834, -88 40.255	Not on permit map; on our map
60	Pascagoula River Reef Site 3	30 24.48, -88 36.896	
61	Pascagoula River Reef Site 4	30 24.166, -88 36.459	
62	Pascagoula West River Mouth Reef	30 21.872, -88 35.993	Not on permit map; on our map
63	Round Island Jetty*	30 17.385, -88 35.285	
64	Pascagoula River Reef Site 1	30 22.812, -88 34.131	Different lat/long on permit map than on our map
65	Pascagoula Front Beach Reef	30 20.045, -88 32.23	
66	Pascagoula Municipal Pier	30 20.435, -88 32.044	Different lat/long on permit map than on our map
67	Waveland Pier Reef	30 16.838, -89 21.871	
* Sites with 106 sensitive; to be avoided			

Mississippi Nearshore Artificial Reefs



Inshore Artificial Reefs

ID #, Reef Name, Coordinate

- 1, Oar Street Reef, 30 16 17, -89 22 34
- 2, St. Claire Reef, 30 16 35, -89 22 16
- 3, Waveland Rubble Reef 2, 30 16 847, -89 21 882
- 4, Monroe Street Reef, 30 17 05, -89 21 47
- 5, American Legion Launch Reef, 30 17 35, -89 19 8
- 6, American Legion Pier Reef, 30 18 106, -89 19 605
- 7, Cedar Point Reef, 30 20 21, -89 19 54
- 8, Square Handkerchief Key, 30 16 345, -89 15 901
- 9, BSL Train Bridge Reef, 30 18 707, -89 18 003
- 10, Lower Fork Reef, 30 20 106, -89 17 244
- 11, Pass Harbor Pier Reef, 30 18 005, -89 14 972
- 12, Long Ave. Reef, 30 19 008, -89 13 304
- 13, Jeponica Drive Reef, 30 19 373, -89 12 4
- 14, Emerald Street Reef, 30 19 538, -89 11 707
- 15, Walmart Reef, 30 19 54, -89 11 264
- 16, Jeff Davis Ave. Pier Reef, 30 20 082, -89 8 849
- 17, Long Beach Harbor Jetty Reef, 30 20 508, -89 8 561
- 18, Long Beach Harbor Pier Reef, 30 20 572, -89 8 413
- 19, USM Reef, 30 20 832, -89 8 019
- 20, Long Beach East Reef, 30 20 583, -89 7 915
- 21, Fournier Ave. Reef, 30 21 173, -89 7 024
- 22, Charles Walker Pier, 30 21 585, -89 6 512
- 23, Urie Pier North, 30 21 508, -89 5 175
- 24, Urie Pier South, 30 21 519, -89 5 168
- 25, Moses Pier Reef, 30 21 564, -89 5 004
- 26, Thornton Ave. Reef, 30 21 86, -89 4 582
- 27, Kelly Ave. Reef, 30 22 09, -89 4 192
- 28, Hewes Avenue Reef, 30 22 218, -89 3 583
- 29, VA Hospital Reef, 30 22 298, -89 3 137
- 30, Courthouse Road Pier Reef, 30 22 367, -89 2 537
- 31, Tegarden Reef, 30 22 565, -89 2 132
- 32, Naval Hospital Reef, 30 22 831, -89 0 994
- 33, Legacy Tower Reef, 30 22 998, -89 0 201
- 34, Broadwater Harbor Reef, 30 22 237, -88 58 221
- 35, Whitehouse Reef, 30 22 472, -88 55 572
- 36, Keesler Harbor Reef, 30 25 223, -88 55 327
- 37, Goat Island Reef, 30 25 347, -88 54 585
- 38, d'Iberville Marina Reef, 30 25 356, -88 53 562
- 39, d'Iberville Bridge Reef, 30 25 363, -88 53 469
- 40, Biloxi Harbor Reef, 30 23 473, -88 52 979
- 41, Keesler Rubble Reef, 30 21 772, -88 52 935
- 42, Kuhn Street Pier Reef, 30 23 476, -88 52 35
- 43, South Deer Island Barge reef, 30 22 576, -88 52 258
- 44, Joe Thornton Hull Reef, 30 23 206, -88 51 627
- 45, Scott Island South Reef, 30 24 826, -88 51 577
- 46, Fort Bayou Reef, 30 25 254, -88 51 589
- 47, Scott Island North Reef, 30 25 118, -88 51 343
- 48, Old Highway 90 Bridge Reef West, 30 24 168, -88 51 07
- 49, East Biloxi Channel Reef, 30 23 162, -88 50 843
- 50, Old Highway 90 Bridge Reef East, 30 24 482, -88 50 584
- 51, Katrina Key Reef, 30 21 411, -88 50 359
- 52, Ocean Springs Community Pier Ree, 30 24 322, -88 50 051
- 53, Deer Island North Reef, 30 22 56, -88 48 924
- 54, Ocean Springs Pier Reef, 30 24 231, -88 49 61
- 55, Ocean Springs Harbor Pier Reef, 30 24 139, -88 49 475
- 56, Gulf Park Estates Reef, 30 21 528, -88 46 058
- 57, Gulf Park Estates Pier Reef, 30 21 647, -88 46 874
- 58, Belle Fontaine Reef, 30 19 503, -88 43 072
- 59, Graveline Reef, 30 20 834, -88 40 255
- 60, Pascagoula River Reef Site 2, 30 24 48, -88 36 896
- 61, Pascagoula River Reef Site 4, 30 24 100, -88 36 459
- 62, Pascagoula West River Mouth Reef, 30 21 872, -88 35 993
- 63, Round Island Jetty, 30 17 383, -88 35 285
- 64, Pascagoula River Reef Site 1, 30 22 812, -88 34 131
- 65, Pascagoula Front Beach Reef, 30 20 045, -88 32 22
- 66, Pascagoula Municipal Pier, 30 20 435, -88 32 044
- 67, Waveland Pier Reef, 30 16 838, -89 21 887

5/31/2010

Based on U.S G.S 1:100,000
Digital Line Graph Data.
—For Planning Purposes Only—