



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, MOBILE DISTRICT  
CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, ALABAMA 36628-0001

February 19, 2013

Coastal Branch  
Regulatory Division

SUBJECT: Department of the Army Nationwide Permit Number SAM-2007-0316-MFM,  
Rehabilitate Oyster Reefs, Mississippi Department of Marine Resources.

Mississippi Department  
of Marine Resources  
Attention: Mr. Scott Gordon  
1141 Bayview Avenue, Suite 101  
Biloxi, Mississippi 39530

Dear Mr. Gordon:

Reference is made to your request, determined complete on February 4, 2013, for a Department of the Army (DA) Nationwide Permit (NWP) 48 to rehabilitate approximately 2,777 acres of oyster reefs by planting cultch material (up to 150 cubic yards / acre) in Mississippi Sound south of St. Louis Bay, Mississippi. See the enclosed maps showing the exact locations of the planting sites. The sites identified on the maps are as follows: KF08-06L, KF08-07S, FK08-08L, KF08-05L, KF08-02S, KF08-03S, KF08-01S, KF08-02S, KF08-03S, KF08-04L, KF08-05L, KF08-06L, and KF08-04L.

Based upon the information and plans provided, we hereby authorize the work described above, which would be performed in accordance with the enclosed plans, is authorized by NWP 48. This letter verifies the proposed activities are authorized by NWP 48 in accordance with 33 CFR Part 330 of our regulations. This NWP and its associated General Conditions can be viewed at our website at [www.sam.usace.army.mil/Missions/Regulatory.aspx](http://www.sam.usace.army.mil/Missions/Regulatory.aspx). You must comply with all terms and conditions associated with NWP 48, as well as with the following special conditions:

a. The permittee shall comply with all requirements of the Mississippi Department of Environmental Quality 401 Water Quality Certification agreement dated March 23, 2012.

b. If any evidence of the presence of Endangered/Threatened Species is found during construction, ground disturbing activities in the immediate vicinity must cease and the permittee shall notify the U.S. Army Corps of Engineers (Corps), Mobile District and the U.S. Fish and Wildlife Service immediately.

c. Should artifacts or archaeological features be encountered during project activities, all heavy equipment operations within a 35-foot buffer surrounding the potentially significant artifact(s) or the observation will cease and the Corps and the State Historic Preservation Officer shall be consulted immediately.

d. It is the permittee's responsibility to ensure that contractors working on this project are aware of all general and special permit conditions associated with this permit verification.

e. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers and other structures necessary for the continued operation of the existing commercial aquaculture activity.

f. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

g. This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the water body). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas or the deposition of shell material back into waters of the United States as waste.

h. The permittee must submit a pre-construction notification to the district engineer since the project area is greater than 100 acres.

i. You must notify us if: (1) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (2) there is a change in species being cultivated; or (3) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (4) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation.

j. The permittee shall notify the Corps, Mobile District, Navigation Section and the U.S. Coast Guard (USCG) 60 days prior to work mobilization so that a "Notice to Mariners" can be issued. The work schedule shall be submitted by phone to both the Corps and the USCG.

Corps, Mobile District, OP-TN, Post Office Box 2288, Mobile, Alabama 36628-0001, (251) 690-2570.

USCG, Sector Mobile, Attention: Marine Safety Office, Brookley Complex, Building 102, Mobile, Alabama 36615-1390, (251) 441-5940.

k. Construction activities shall not infringe upon navigation on the waterway. These activities shall be in compliance with 33 CFR 163, which states in part: "A clear channel shall at all times be left open to permit free and unobstructed navigation by all types of vessels and tows normally using the various waterways."

1. 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, 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.


This verification is valid until *two years from the date of this letter*, which is the date all of the existing NWP will expire.

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.

Please note, NWP General Condition 30 (*Compliance Certification*) requires every permittee who has received NWP verification must submit a signed certification regarding the completed work and any required mitigation. The enclosed Compliance Certification form, must be completed and returned to the letterhead address within 60 days of completion of the work authorized.

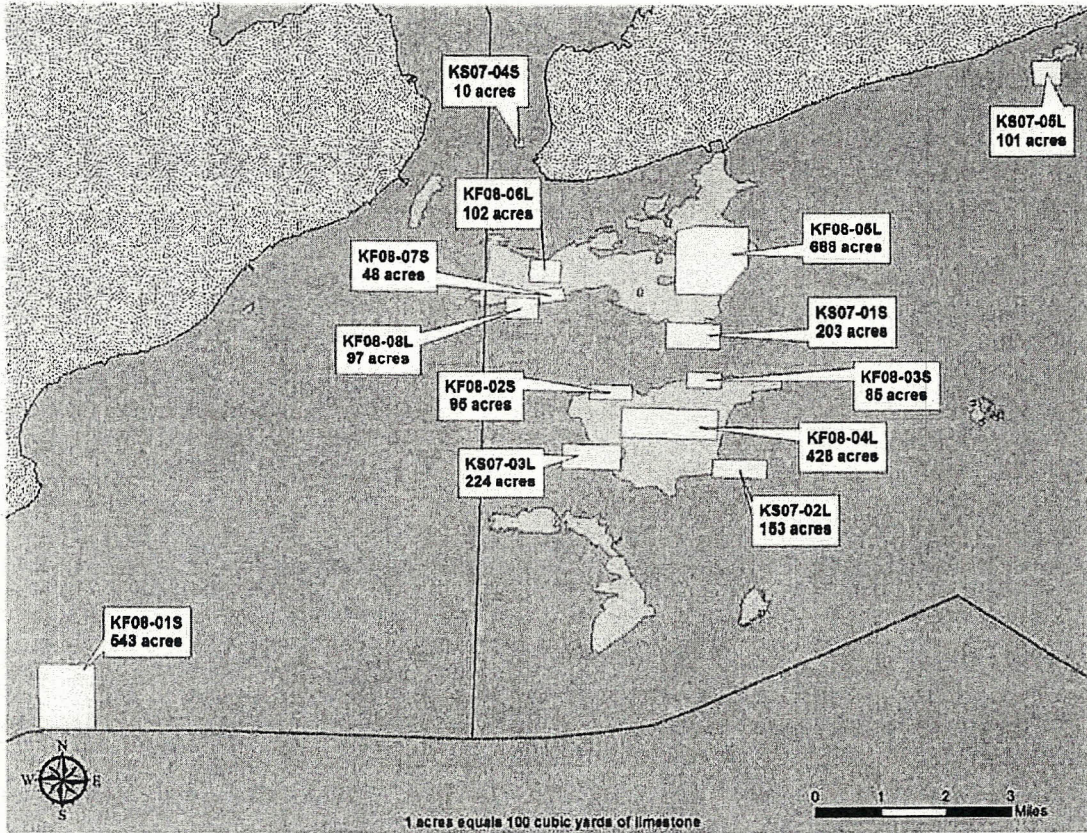
Please call me at (251) 694-3781, if you have any questions. For additional information about our Regulatory Program, visit our web site at [ww.sam.usace.army.mil/Missions/Regulatory.aspx](http://ww.sam.usace.army.mil/Missions/Regulatory.aspx) and please take a moment to complete our customer satisfaction survey while you are there. Your responses are appreciated and will allow us to improve our services.

Sincerely,

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

Enclosures





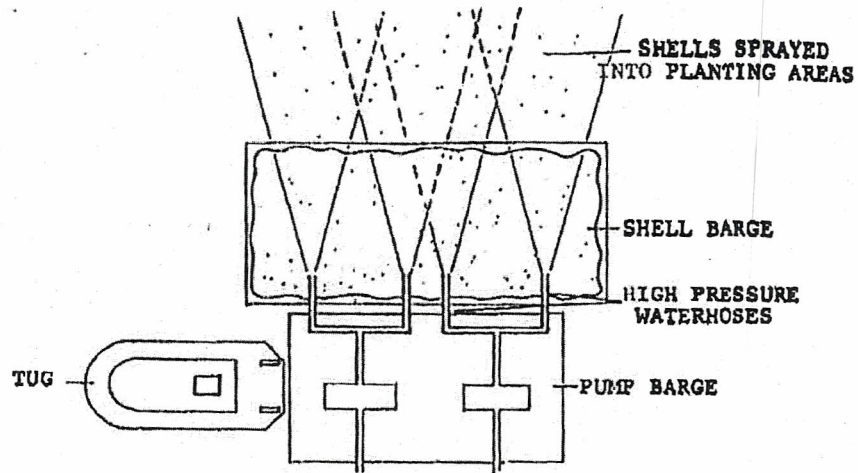


FIGURE I

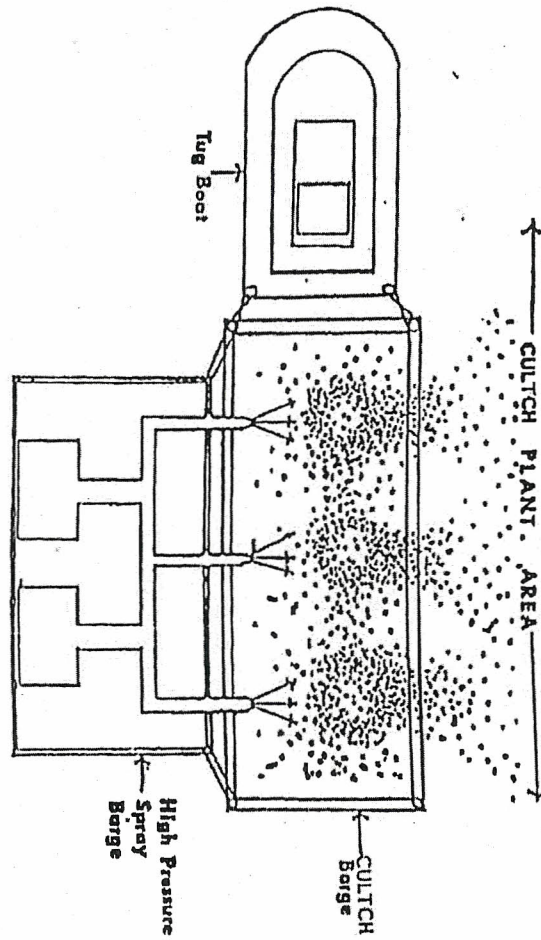


Figure 2



**ATTACHMENT**

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): February 14, 2013**

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Mississippi Department of  
Marine Resources  
Mr. Scott Gordon  
1141 Bayview Avenue  
Biloxi, Mississippi 39530, Suite 101

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Biloxi, MS; SAM-2007-316-MFM**

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: Multiple Clutch Locations within the Mississippi Sound (See the attached). (USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: County/parish/borough: City:  
Center coordinates of site (lat/long in degree decimal format): Lat. **Pick List**,  
Long. **Pick List**.

Universal Transverse Mercator:

Name of nearest waterbody: Murder Creek and King Branch

Identify (estimate) amount of waters in the review area:

Non-wetland waters: (ft) and/or acres.

Cowardin Class:

Stream Flow:

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: Mississippi Sound

Non-Tidal:

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

X Office (Desk) Determination. Date: 14 February 2013

Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:



**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply**

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

X Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: MDMR.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

N/A 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:

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 Geodetic Vertical Datum of 1929)

Photographs:  Aerial (Name & Date):

or  Other (Name & Date):

Previous determination(s). File no. and date of response letter:

X Other information (please specify): See the attached.

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

\_\_\_\_\_  
Damon M. Young, P.G.  
Team Leader, Coastal Mississippi  
Regulatory Division

\_\_\_\_\_  
Mr. Scott Gordon  
MDMR

SAMPLE

<b>Site number</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Cowardin Class</b>	<b>Estimated amount of aquatic resource in review area</b>	<b>Class of aquatic resource</b>
See					
Attached					



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 at REHABILITATE OYSTER REEFS, MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES has been issued to ATTENTION: MR. SCOTT GORDON on FEBRUARY 19, 2013

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

Permit Number

SAM-2007-00316-MFM

FOR THE Damon M. Young, P.G. District Commander Team Leader Coastal Mississippi Regulatory Division (Proponent: CECW-0)

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

CESAM FORM 851 JUN 87

NOTICE OF COMPLETION OF WORK AUTHORIZED BY PERMITS WORK AUTHORIZED UNDER DEPARTMENT OF THE ARMY PERMIT SAM-2007-00316-MFM DATED 2/19/2013 REHABILITATE OYSTER REEFS, MISSISSIPPI DEPARTMENT OF MARINE TO PERFORM WORK IN RESOURCES WAS COMPLETED ON BY: SIGNATURE

NOTICE OF COMMENCEMENT OF WORK AUTHORIZED BY PERMITS WORK AUTHORIZED UNDER DEPARTMENT OF THE ARMY PERMIT SAM-2007-91300-7-MFM DATED 2/19/2013 REHABILITATE OYSTER REEFS, MISSISSIPPI DEPARTMENT OF TO PERFORM WORK IN MARINE RESOURCES WAS COMMENCED ON BY: SIGNATURE

CESAM FORM 850 JUNE 87