

ENVIRONMENTAL ASSESSMENT, 404(B)(1) ANALYSIS, STATEMENT OF FINDINGS,
AND DECISION DOCUMENT

In the wake of Hurricane Katrina, Regional General Permit (RGP) SAM-20 is proposed to facilitate residential rebuilding efforts along the Mississippi Gulf Coast. This would allow expedited permitting procedures for impacts to low-quality waters of the United States, thereby allowing the victims of the devastation to recover and rebuild in a more timely manner.

According to the National Low Income Housing Coalition, Katrina destroyed or damaged 302,000 housing units along the Gulf Coast. Of these units, 216,000 were affordable to low income households, earning 80% of the Area Median Income (AMI) or less, and 92,000 were affordable to very low income households earning less than 50% of AMI. Thus, 71% of the housing stock destroyed or damaged by Hurricane Katrina was affordable to low income households and 30% were affordable to very low income households. The statistics referenced above indicate that Katrina impacted housing for segments of the population that are least able to recover from natural disasters. The purpose of the RGP is to help replenish the housing stock in coastal Mississippi by establishing a streamlined procedure that would allow permits to be issued more quickly without compromising protection of aquatic resources. In fact, the proposed RGP requires more up front information and has more rigorous permit conditions than any other permit currently used by the Mobile District.

This document constitutes my Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Statement of Findings (SOF), and review and compliance determination according to the 404(b)(1) guidelines for the proposed Regional General Permit (RGP-SAM-20).

This permit action is being taken under authority delegated to the Mobile District Engineer by the Secretary of the Army and the Chief of Engineers by Title 33, Code of Federal Regulations, Parts 320 through 325, pursuant to Section 404 of the Clean Water Act.

The term "general permit" means a Department of the Army (DA) authorization that is issued on a nationwide or regional basis for a category of activities which are substantially similar in nature and cause only minimal individual and cumulative impacts. General permits are a way to reduce the burden of the regulatory program on the public and ensure timely issuance of permits while effectively protecting aquatic resources while administering the laws and regulations which establish and govern the program. An assessment of the cumulative impacts of work authorized under the general permit is performed at that time if it is in the public interest to do so. In most instances, anyone complying with the conditions of the general permit can receive project specific authorization. Anyone not complying with the conditions of a general permit may still receive authorization via a standard permit, but the application must be individually evaluated and coordinated with third parties, including the Federal and state resource agencies. Review of an application for a standard permit takes additional time to complete as issue resolution may be required.

1. Applicant: Those wishing to construct or expand residential building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures, within Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi.

2. Application Number: SAM-2006-2181-JWS

3. Location and Environmental Setting Without the RGP

a. Location: Low-quality wetlands, outside the exclusion areas, and within Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi.

b. Environmental Setting Without the RGP: The Hurricanes of 2005 created unprecedented destruction within the Gulf Region. Coastal Mississippi was the point of impact of the greatest tidal surge that has hit the mainland in its recorded history. The full effects of the destruction and disruption caused by the hurricanes of 2005 to the Mississippi Coast are still being studied.

Congress directed and provided funds to the U.S. Army Corps of Engineers (USACE), through Defense Appropriations Act 2006 (P.L. 109-148), to “conduct an analysis and design for comprehensive improvements or modifications to existing improvements in the coastal area of Mississippi in the interest of hurricanes and storm damage reduction, prevention of saltwater intrusion, preservation of fish and wildlife, prevention of erosion, and other related water resource purpose.” In response to P.L. 109-148, the USACE initiated the Mississippi Coastal Improvements Program (MsCIP). USACE staff evaluating this permit action also consulted with members of the MsCIP team. Additional consultation includes review of the June 2006 MsCIP Interim Report and continued coordination during development of the comprehensive report relating to regulatory activities of the Mobile District.

As a group, the hurricanes of 2005 caused extensive damage to wetlands, fish and wildlife, the shrimp and oyster industries, shore protection, jetties, groins, seawalls, navigation channels, barrier island ecosystems, public infrastructure, commercial and recreational vessels, roads, bridges, aquatic and terrestrial habitat, commercial and industrial development, marshes, forests. It was most devastating to individuals and families, by destroying homes, businesses, and livelihoods of tens of thousands of individuals.

The Final Environmental Impact Statement, Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity For Large-Scale Development in Coastal Mississippi (August 2005), contains valuable information on the environmental setting of the three (3) coastal counties, despite the fact that the 2005 hurricanes certainly impacted the trends analysis and growth projections in that document. Significant for the evaluation of this RGP was the analysis of population growth trends. The Final EIS states, “Population growth in the Mississippi Coastal Region during the past three decades has been characterized by alternating periods of relatively robust growth and stagnation.” This boom-bust

cycle can generate large numbers of USACE permit applications over a relatively short period of time.

Natural events, such as hurricanes, can exacerbate this cycle as the affected communities adapt and attempt to overcome new challenges. Since Hurricane Katrina, the lower six counties in Mississippi have experienced a myriad of challenges as the population attempts to rebuild. These challenges have resulted in changes that could increase permitting workloads, and thus the time required to evaluate permit applications. These include: rebuilding structures damaged during the storm; the movement of segments of the population north of Interstate 10 into Pearl River, Stone, and George Counties; and relocating the gaming industry from floating barges to land based structures.

The lack of available housing is adversely affecting recovery. Without the proposed RGP, the lower six counties in Mississippi would take longer to recover, due to the time involved in processing the numerous Individual Permits (IP) associated with the recovery. The areas would continue to expand with or without this RGP, as documented in previous boom and bust cycles. This RGP would allow for the recovery to take place in a more timely manner (60 days vs. 249 days post-Katrina), thus allowing development that was already going to take place before Hurricane Katrina to keep up with the surrounding growth rate. It is important to note that permit review process under both the Individual Permit (IP) or RGP requires adherence to the 404(b)(1) Guidelines (avoidance, minimization, and mitigation). Additionally, no project can be approved by use of the RGP if its impacts to the environment are more than minimal, individually and cumulatively. The RGP simply provides for a streamlined process for reviewing certain permit applications to respond to the urgent need for residential development as a result of Hurricane Katrina.

The lower six counties of Mississippi are comprised of approximately 1,960,593 acres and include approximately 478,681 acres of wetlands (Jackson – 223,622 acres, Hancock – 84,515 acres, Harrison – 96,294 acres, Pearl River – 22,686 acres, Stone – 37,374 acres, and George – 14,190 acres). Out of the 478,681 acres of wetlands within the lower six counties, 236,598 acres (approximately 50%) are within the 100-year floodplain.

4. Project Description, Changes to Project

a. Project Description: The Mobile District proposes to issue a Regional General Permit (RGP) SAM-20 (see Appendix B) that would authorize the discharge of dredged or fill materials into non-tidal waters of the United States for the purpose of constructing residential developments in the lower six counties of Mississippi. The RGP would help reduce the regulatory burden for the recovery of coastal Mississippi, due to Hurricane Katrina, while at the same time protecting aquatic resources and ensuring minimal aquatic impacts. The Department of the Army, Mobile District, U.S. Army Corps of Engineers (USACE), Regulatory Division proposes to issue Regional General Permit SAM-20 for Residential Developments within the Mobile District, Regulatory Division's, Geographic Boundary of Hancock, Harrison, Jackson,

Pearl River, Stone, and George Counties, Mississippi for an initial period of two years. RGP SAM-20 may be extended to a period not to exceed five years.

The proposed RGP would establish a permit process where an applicant would complete the joint application with the State of Mississippi and submit it to the USACE along with all the required items specified in the terms and conditions of the proposed permit. The required information would provide the USACE with knowledge that is normally not provided when an application for an Individual Permit (IP) is first received and is not a legal requirement for an application to be considered complete under the IP review process. If an application is reviewed under the IP process, a public notice is generated once an application is complete and additional information is generally requested after the close of the comment period for the public notice. By having required information such as: a wetland delineation, a wetland functional assessment, aerial photos, cultural resource survey, and endangered species surveys submitted with the application, the USACE would have much more information about site conditions than usually received with permit applications. This additional information would allow for a more timely review under the proposed RGP.

b. Changes to Project: The RGP was proposed to facilitate rebuilding efforts along the Mississippi Gulf Coast, in the wake of Hurricane Katrina, by allowing expedited permitting procedures for impacts to low-quality waters of the United States. The proposal was initially distributed via Public Notice dated October 10, 2006 with a proposal that would have authorized the filling of up to 5 acres of low-quality wetlands for development of residential, commercial, and institutional developments within the six counties. As a result of receiving substantial comments from the public, Federal resource agencies, State resource agencies, non-governmental agencies, and other interested parties, changes were made to the proposed RGP. Changes made to the first proposal include: 1) reducing the wetland acreage limit which changed from 5 acres to 3 acres, 2) expanding excluded areas which resulted in the addition of 8 new excluded areas, 3) establishing a 7-day coordination period for State and Federal agencies, 4) clarifying the terms "tidal" and "adjacent", 5) eliminating commercial developments, 6) adding 30-foot stream buffers, and 7) prohibiting stream channelization or relocation. Changes made to the second proposal include: 1) eliminating institutional developments, and 2) adding a special condition that the development cannot result in post-construction conditions that would flood adjacent properties.

5. Environmental Impact of the Proposed Action: Impacts associated with this RGP would be confined to low-quality wetlands of 3 acres or less. In reality, this RGP would allow for a better product/permit than what is currently being issued by the Mobile District, Regulatory Division. Currently an application in the six lower counties of Mississippi, for more than ½-acre of wetland impacts, including high-quality wetlands and stream impacts, takes approximately 249 days to issue. The main reasons for taking 249 days to issue a permit are lack of information/data supplied by the applicant in order for the USACE to process the application, coordination with the public (21-day Public Notice), drafting the Combined Decision Document Environmental Assessment and Statement of Findings (EA/SOF), and processing an average of 60 applications per project manager. This RGP should cut processing time down to

approximately 60 days due to conditions placed on the RGP that require the applicant to supply all information up front with the submittal of the application, only allowing low-quality wetland impacts of 3 acres or less, and restricting areas that are sensitive. This RGP would not allow any more actions to take place than what could potentially occur under the standard permit process and would allow for decreased application review times while at the same time, protecting those wetlands that are vital to the area. With the conditions set forth in the RGP, the activities authorized would have only minimal adverse effects on the environment, both individually and cumulatively, provided the terms and conditions of this RGP are satisfied.

Between 1996 and 2000, the Mobile District Regulatory Division issued 373 Nationwide Permit number 26 (NWP-26) permits for the entire District (including AL and MS). The NWP-26 between 1996 and 2000, authorized impacts to 3 acres of wetlands or less that were above the headwaters and/or isolated. The NWP-26 was not renewed in 2000. Between 2000 and 2006, the Mobile District Regulatory Division issued 218 IPs for the six lower counties of Mississippi, of which approximately 19 permits had impacts between 0.5 acres and 3 acres, were for residential developments, and were low-quality wetland impacts. These 19 permits resulted in 29.98 acres of impacts with 91.44 acres of mitigation. It should be noted that of these 19 permits, it could not be determined if the projects were located within 100-year floodplains or within or abutting any of the proposed exclusion areas. This information suggests that applicants tend to utilize the permit, which can be obtained the quickest. When the NWP-26 was available, applicants designed their projects to fit so they could obtain a permit more quickly. Once the NWP-26 was removed, the only similar permit was the NWP-39 for impacts to 0.5 acres of wetlands or less. The NWP-26 essentially operated to encourage applicants to design their projects to reduce wetland impacts. Without the availability of the NWP-26, the applicant had no incentive to reduce impacts and therefore the USACE began to see a substantial increase in the number of Individual Permits.

As noted above, the number of Individual Permit applications received, after the NWP-26 was no longer available with impacts of 3-acres or less was limited to 19. Once the incentive of a shorter application review time was removed, the IP permit application numbers indicate a trend of applicants requesting to maximize their use of property by seeking authorization to impact a higher percentage of wetlands on the project site. With the removal of NWP-26, the applicant no longer realized a time-savings in the permit review process. This RGP would once again provide incentive to the applicant to reduce project impacts so that they may obtain an expedited permit. Each application received would be reviewed independently to ensure it meets all conditions of the RGP (avoidance, minimization, mitigation, alternatives analysis, and 404(b)(1) guidelines). There is a difference between this RGP and the normal IP process in that there is no notice to the public of individual projects seeking to use the RGP prior to USACE approval or denial. However, the USACE is requiring the applicant provide detailed information up front, and there will be resource agency review. Therefore, the RGP allows the USACE to make a timely decision and the recovery of the Mississippi Coast, post-Katrina, to be expedited.

6. Project Purpose and Need

a. Basic Project Purpose: To replenish the housing stock, in the wake of Hurricane Katrina, within the six lower Counties of Mississippi.

b. Overall Project Purpose: To streamline the regulatory process, in the wake of Hurricane Katrina, through the accelerated permitting of residential developments within the USACE, Mobile District, Regulatory Division's, Geographic Boundary of Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi.

c. Need: The main need for the proposed RGP is the immediate need for housing, post-Katrina.

In the wake of Hurricane Katrina, Regional General Permit (RGP) SAM-20 is proposed to facilitate residential rebuilding efforts along the Mississippi Gulf Coast. This would allow expedited permitting procedures for impacts to low-quality waters of the United States, thereby allowing the victims of the devastation to recover and rebuild in a more timely manner.

According to the National Low Income Housing Coalition, Katrina destroyed or damaged 302,000 housing units along the Gulf Coast. Of these units, 216,000 were affordable to low income households, earning 80% of the Area Median Income (AMI) or less, and 92,000 were affordable to very low income households earning less than 50% of AMI. Thus, 71% of the housing stock destroyed or damaged by Hurricane Katrina was affordable to low income households and 30% were affordable to very low income households. The statistics referenced above indicate that Katrina impacted housing for segments of the population that are least able to recover from natural disasters. The purpose of the RGP is to help replenish the housing stock in coastal Mississippi by establishing a streamlined procedure that would allow permits to be issued more quickly without compromising protection of aquatic resources. In fact, the proposed RGP requires more up front information and has more rigorous permit conditions than any other permit currently used by the Mobile District.

There are concerns regarding the USACE's normal permitting timeframes. The national goal of the USACE Regulatory Program is to issue eighty-five percent of Individual Permits (IP) within 120 days. The average time to issue an IP in the Mobile District is 240 days. As stated in our regulations at 33 CFR Part 320.1 (4), the USACE believes that applicants are due a timely decision. Reducing unnecessary paperwork and delays is a continuing USACE goal. The USACE agreed to investigate the possibility of this RGP as part of our ongoing commitment to reduce delays. Although regulatory agency delays are always a concern for the regulated community, the urgent need for housing in coastal Mississippi following the 2005 hurricanes creates an unprecedented situation. Initial review of historic permitting data indicated a high percentage of IP's reviewed authorized impacts to 3 to 5 acres of wetlands, thus indicating that a need may exist for an RGP to cover impacts to approximately 5 acres of wetland impacts.

Housing

Information obtained from the Mississippi Governor's Office of Recovery & Renewal, via email dated April 2, 2007, indicates an upward trend in building permits for new single family residences issued within the geographic boundary of Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi. The information from the Governor's office can be found in the administrative record, under the "Supporting Data" section. Not every person moving to Mississippi would build a new house and impact wetlands; however, population growth and new housing starts represent a general trend that indicates the likely increase in permitting activity.

The following housing information and data comes from the USACE, Interim Report, Mississippi Coastal Improvements Program (MsCIP) Hancock, Harrison, and Jackson Counties, Mississippi, August 2006:

The housing stock along the Mississippi Gulf Coast, based on the 2000 Census, is summarized in Table 1. This table identifies both owner-occupied and renter-occupied homes, along with median home values, for each county. The homes identified include all structure types (e.g., single-family homes, apartments, and mobile homes). Harrison County, the most populous of the three counties, also has most of the region's housing stock (52.3 percent). Hancock County had the lowest number of homes and the lowest population, with 13.8 percent of the housing stock.

Table 1 2000 Housing Stock				
	Hancock County	Harrison County	Jackson County	Project Area
Total Housing Units	21,072	79,636	51,678	152,386
Occupied Housing Units	16,897	71,538	47,676	136,111
Vacant Housing Units	4,175	8,098	4,002	16,275
For Sale (percent)	6.9	10.7	13.7	10.4
For Rent (percent)	14.9	39.0	34.2	29.4
Seasonal Use (percent)	56.8	20.7	15.3	30.9
Vacancy Rate, Homeowner	2.1	1.9	1.5	1.8
Vacancy Rate, Rental	15.3	10.6	10.1	12.0
Source: U.S. DOC, Census, 2001c				

All of the Mississippi coastal counties were affected by the hurricanes of 2005. All aspects of the economy and social fabric of coastal Mississippi were affected by Hurricane Katrina, and will continue to be felt for years to come. The hurricane resulted in mass displacement of people and fractured communities.

Table 2 illustrates the pre-Katrina and post-Katrina housing situation, according to recent Red Cross estimates maintained by the Mississippi Emergency Management Agency (MEMA, 2006).

	Pre-Katrina Total	Destroyed	Heavily Damaged	Minor Damage
Hancock	21,072	10,900	3,600	1,800
Harrison	79,636	29,970	15,470	31,905
Jackson	51,678	23,250	16,250	8,600
TOTAL	152,386	64,120 *	35,320	42,305
*Also estimated at 65,380 (Sun Herald, 2006).				

Many individuals sought refuge in shelters during the storm. By September 2005, the American Red Cross was operating more than 129 shelters, housing 15,000 evacuees. Many more sought housing elsewhere; in neighboring communities, counties, and states. While some families have returned home, many are still living in interim housing, including Federal Emergency Management Agency (FEMA)-provided trailers, many of which have been sited on devastated properties.

In addition to destroyed housing, nearly 47,000 damaged homes in Jackson, Hancock, and Harrison Counties were covered by FEMA's "Blue Roof" program so that families were able to remain in their homes as they rebuild. These are the most roofs covered following a single hurricane in the "Blue Roof" program's history. FEMA has already provided \$5.2 billion directly to Hurricane Katrina victims for housing and other needs assistance through the Individuals and Households Assistance Program. This is the most ever provided by FEMA for any single natural disaster. The USACE has delivered, installed and released for occupancy 711 temporary public buildings including 485 temporary classrooms and 226 office buildings to various local governments across Mississippi. As of January 2006, FEMA had completed more than 400,500 housing inspections. The inspection process included a complete overview for structural damage. More than 514,000 Mississippians have registered for assistance through the FEMA Helpline. FEMA Community Relations and Human Services Strike Teams have interviewed more than 2,700 displaced individuals and families in hotels or motels to assist them in finding solutions to their long-term housing needs.

Population

The following population information and data comes from the USACE, Interim Report, Mississippi Coastal Improvements Program (MsCIP) Hancock, Harrison, and Jackson Counties, Mississippi, August 2006:

Population Pre-Hurricane Katrina

Population growth in the Mississippi Coastal Region during the past three decades has been characterized by alternating periods of relatively robust growth and stagnation. In the decade

spanning the 1970s, for example, the three counties experienced significant growth, as the population increased by more than 25 percent. During this decade, the population increased at almost double the growth rate for the State of Mississippi and more than twice that of the United States. This time period did follow Hurricane Camille, which made landfall in 1969. In contrast, during the 1980s the population expanded by only 4 percent. This rate of increase, while exceeding that for Mississippi, was less than half the growth rate for the United States. The most recent decade, however, has seen a modest rebound in the region's population growth. During that period, the population increased by about 16 percent, compared to about a 13 percent growth for the nation as a whole. It appears from past experience that while the occurrence of a major hurricane has an initial dramatic influence on out-migration of residents, due presumably to the loss of homes and businesses, it also spurs a period of growth in population as old and new residents return to the area.

Population growth patterns also have varied within the three counties. Jackson County experienced a steep growth in population during the 1970s (34 percent), which was followed by a decade during which population actually decreased. Hancock County, the smallest of the three counties, expanded at a fairly consistent rate during the 30-year period from 1970 to 2000, although the fastest growth in terms of percentage was in the 1970s. Harrison County, which is the largest of the three counties and accounts for about half of the total of coastal Mississippi's population, has experienced relatively slow growth through much of the 30-year period, with the exception of the 1990s. Table 3 summarizes population trends for each of the counties for the last three decades. Table 4 provides percentage changes in population for each of the counties presented in Table 3. Data for Mississippi and the United States are also provided for comparison purposes. As shown in the tables, Mississippi has been characterized by sluggish growth throughout the period, especially during the 1980s, when total state population increased by only 2 percent.

Location	1970	1980	1990	2000
Hancock County	17,387	24,537	31,760	42,967
Harrison County	134,582	157,665	165,365	189,601
Jackson County	87,975	118,015	115,243	131,420
Mississippi	2,216,912	2,520,638	2,573,216	2,844,658
United States	203,211,926	226,545,805	248,709,873	281,421,906

¹ Source of 1970, 1980, and 1990 data: U.S. DOC, Census, 1995.
² Source of 2000 data: U.S. DOC, Census, 2001a.

Location	% Change 1970–1980	% Change 1980–1990	% Change 1990–2000	% Change 1970–2000
Hancock County	41.1	29.4	35.3	147.1
Harrison County	17.2	4.9	14.7	40.9
Jackson County	34.1	-2.3	14.0	49.4
Mississippi	13.7	2.1	10.5	28.3
United States	11.5	9.8	13.2	38.5

Population dynamics have been strongly influenced by several economic factors, including the effects from the expansion of several large government installations, the stagnation and decline of certain industrial sectors (including the seafood industry), and the more recent onset of large-scale development associated with the gaming industry. In particular, the development of Stennis Space Center has served as a strong economic and population stimulus to Hancock County, while Keesler Air Force Base has provided a degree of stability to Harrison County in the face of job losses in the manufacturing and seafood sectors. Development of the casino industry during the past decade has had a profound effect on reversing trends of net out-migration and has spurred both population and economic growth in Harrison County and, to a lesser extent, Hancock and Jackson Counties.

Population Post-Hurricane Katrina

In the Biloxi-Gulfport-Pascagoula metropolitan area, it is estimated that about 364,000 people were impacted by Hurricane Katrina (Congressional Research Service (CRS) 2005). A large percentage of the population left the Gulf coast prior to Hurricane Katrina making landfall; however, exact numbers are hard to determine. To date, many coastal Mississippi residents remain displaced throughout the state and with some in Alabama, Texas, Florida, Arkansas, and etc. Many cities and/or towns have witnessed their populations decrease. Waveland, Mississippi had a pre-Katrina population of about 7,000 individuals, and now has a population of fewer than 1,000 individuals.

Using recent historical hurricanes, such as Ivan and Georges, the USACE, Mobile District anticipate the Mississippi population to increase greatly within the next decade. Indeed, both the cities of Gulf Shores and Pensacola have seen population increases since Hurricane Ivan and Hurricane Georges, and both experienced significant shoreline re-development which also was accompanied by increased population density. Neither of those two communities was host to gambling industry facilities, so rebuilding of damaged facilities, and the addition of new gambling facilities along the coast of Mississippi may have an additional impact on population growth in the area.

The three non-coastal counties (Pearl River, George, and Stone) have been included as part of the proposed RGP to allow applicants to seek areas for development away from the immediate coastline. Some people will choose to rebuild in the exact location as before their homes were destroyed and some will choose to move inland to areas that will receive less impact from future hurricanes.

The combination of the factors just mentioned (housing availability, permitting timeframes, housing trends, and population trends) indicate a need for an expedited permit review process to evaluate proposed impacts to waters of the United States in the lower six counties of Mississippi. This proposed RGP would serve as a vehicle for a more timely response to the regulated public without diminishing the protection of aquatic resources. Any applicant seeking authorization under the proposed RGP would be required to adhere to the 404(b)(1) Guidelines, which mandate avoidance of impacts to the extent practicable, the minimization of impacts to the extent practicable, and the mitigation of unavoidable impacts.

7. Scope of Analysis: The scope of analysis is the proposed RGP project area: Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi. The project area comprises the permit area for the proposed RGP. Regulated activities that would be authorized by the proposed RGP would occur in the portions of the lower six counties in Mississippi that are not listed as an exclusionary zone. The activity type that would be regulated under the proposed RGP is limited to residential development. The construction of residential developments under the proposed RGP would have direct, indirect, and cumulative impacts on onsite wetlands and waters of the United States; but no direct and only minimal indirect impacts on aquatic resources outside of the RGP project area.

8. Federal, State, and Other Authorizations Obtained, Required, or Pending

a. State water quality certification (401): By letter dated March 28, 2007, the Mississippi Department of Environmental Quality (DEQ), issued water quality certification.

b. Coastal Zone Management (CZM) Consistency Determination: By letter dated March 14, 2007, the Mississippi Department of Marine Resources (DMR) determined this RGP proposal to be consistent to the maximum extent practicable with the Mississippi Coastal Zone Management Program and therefore granted consistency certification. The DMR issued CZM even though the proposed RGP would exclude tidal waters because the geographic boundary covered by the RGP includes non-tidal areas included in Mississippi's definition of coastal zone. Mississippi's coastal zone includes the 3 counties adjacent to the coast. The coastal zone includes these counties, as well as all adjacent coastal waters. Included in this definition are the barrier islands of the coast.

c. Other authorizations: No other State or Federal Authorizations were required to issue this RGP.

9. Public Notice History: The proposal was initially distributed via Public Notice dated October 10, 2006. The initial comment period was until November 10, 2006. The public requested an

extension for comments, and the USACE granted this extension until December 10, 2006. This initial 60-day public comment period allowed the regulated public, Federal resource agencies, state resource agencies, non-governmental agencies, and other interested parties time to review the merits of the proposal. As a result of receiving substantial comments (approximately 3,000) from the public, Federal resource agencies, State resource agencies, non-governmental agencies, and other interested parties, changes were made to the proposed RGP-20. A new Public Notice was issued on February 09, 2007, with comments due by March 11, 2007. As a result of this second public notice, we received approximately 450 comments from citizens throughout the U.S.

10. Public Notice Comments, USACE Analysis of Comments and Responses, and Point by Point Analysis of Comments: A discussion of all public and agency comments received is provided below and the main issues raised are summarized in Table 5. This section is followed by the USACE analysis of comments and responses. A point-by-point presentation of each USACE response is provided in Appendix A.

1) Public Notice Comments

* Note: Acronyms are defined, with corresponding letter, in section that follows.

Table 5

GENERAL CATEGORIES OF CONCERNS										
	A R N I	No Notice to Agencies / Public	Section 106	E S A	Flooding	404(b)1	Acreage Limit	Similar in Nature	Water Quality	W R A P
Federal Agencies										
a. FEMA					√					
b. FWS	√	√		√		√	√		√	√
c. EPA	√					√	√			
State of Mississippi										
d. MDAH			√							
e. DMR		√								
f. DEQ		√			√	√	√		√	
Non-Governmental Organizations (NGO)										
g. Dauphin Island Sea Lab					√	√				
h. PEER					√		√			√
i. Mississippi Wildlife Federation					√	√	√	√		
j. NWF					√	√	√	√		
k. NRDC					√	√	√	√		
l. Ducks Unlimited			√		√		√			√
m. Audubon Society				√	√		√			
n. Tulane University		√		√	√	√	√	√		√
o. Stanford Legal Clinic					√		√	√		√
p. Sierra Club					√	√	√	√		
q. Sierra Club (Mississippi Chapter)							√			
r. Wise Use Movement		√			√	√	√	√		
Others										
s. Cynthia Henderson						√				√
t. Public					√	√	√			
u. EAB							√			

a. **Federal Emergency Management Agency (FEMA):** FEMA responded to the first public notice, by e-mail dated December 8, 2006, that they were neither for nor against the proposal. FEMA requested we add a Special Condition to the proposed RGP to address “conformance with NFIP local requirements and flood risk maps.” FEMA did not comment on the second public notice.

b. **U.S. Fish and Wildlife Service (FWS):** The FWS responded to the first public notice, by letter dated November 16, 2006. The FWS concerns included: 1) the FWS disagrees with the USACE finding of “No Effect” for the RGP; 2) concerned with the types of developments allowed (open-ended); 3) the 5-acre limit of fill is excessive; 4) there is no definition of non-tidal wetlands adjacent to tidal waters; 5) the RGP does not require in-kind mitigation; 6) there is great potential for the occurrence of federally listed species in the Mississippi Gulf Coastal Plain. The FWS believes that direct and indirect impacts often occur adjacent to the proposed project site through fragmentation of habitat such as alteration or culverting of streams, and adverse effects may not be obviously discernible. It is vital that the FWS performs a review of all projects seeking authorization for impacts; 7) there are insufficient safeguards in place, i.e. flagging, silt fencing, to avoid impacts to adjacent wetlands. In the November 16, 2006 letter, the FWS advises that the proposed work may result in substantial and unacceptable impacts to aquatic resources of national importance (ARNI); in accordance with the procedural requirements of the 1992 404(q) Memorandum of Agreement (MOA), Part IV 3(a). The FWS letter concludes with the recommendation of denial due to potential direct, indirect, and cumulative impacts to federally listed species and wetlands.

The FWS did not comment on the second proposal/public notice. They did however commend the USACE for its revisions to the RGP, during a February 1, 2007 teleconference between the USACE and the other State and Federal Agencies.

c. **Environmental Protection Agency (EPA):** The EPA responded to the first public notice, by letters dated December 11, 2006 and January 4, 2007. The December 11, 2006 letter was a 3(a) letter, pursuant to the 1992 404(q) MOA elevation procedures. The EPA also sent a follow up letter on January 4, 2007 outlining their concerns. This letter did not reference Part IV 3.b of the MOA. The EPA was concerned that: 1) this RGP may not adequately protect resources necessary for a vibrant and resilient coastal MS; 2) the RGP may result in unacceptable adverse effects to ARNI; 3) the RGP may result in significant individual and cumulative adverse impacts to the aquatic environment; 4) the RGP does not comply with the 404 b(1) Guidelines; 5) the EPA believes that this RGP is not approvable at this time.

The EPA recommended: a) that all sewage will be treated in publicly owned treatment works, b) stormwater management facilities located in waters of the US will need to demonstrate avoidance, minimization and mitigation, c) the cumulative total of impacts associated with a single and complete project should not exceed the threshold limit of impacts authorized under a single permit, d) the threshold for the RGP be similar in scope to the NWPs. i.e. one to 0.5 acres of impact, e) establish an annual cap to losses of waters of the U.S., f) discuss how temporal

losses should be assessed and mitigated, g) define “non-tidal wetlands adjacent to tidal waters”, h) that the RGP only authorizes permanent impacts to wetlands that are primarily established and maintained by hydrology from groundwater or wetlands that are forested hydric pine-flatwoods, i) change “any affected stream” to “any affected waters of the U.S.”, j) add floodplain condition, k) add “work must not impede or increase natural drainage on adjoining properties”, l) add monitoring and tracking requirements for this RGP, m) add appropriate conditions as required under the Coastal Zone Act Reauthorization Amendments (CZARA), n) provide a map showing existing approved mitigation banks, o) mitigation should be completed prior to starting work, p) the RGP should only apply to projects that have no above grade fills within the floodplain and should apply only to projects that are located outside the 100-year floodplain, q) have proposed fill areas and wetland areas flagged and staked in a manner that clearly differentiates between the fill areas and the wetland areas.

The EPA did not comment on the second proposal/public notice. They did however commend the USACE for its revisions to the RGP, during a February 1, 2007 teleconference between the USACE and the other State and Federal Agencies.

d. **Mississippi Department of Archives and History (MDAH)**: The MDAH responded to the first public notice, by letter dated December 28, 2006, that recommended the USACE take into account the possibility of unknown cultural resources in all projects, in addition to listed and/or eligible resources (para.10), pursuant to Section 106 of the National Historic Preservation Act and 36 CFR Part 800.

The MDAH did not comment on the second proposal/public notice.

e. **Mississippi Department of Marine Resources (DMR)**: DMR responded to the first public notice, by letter dated December 8, 2006 saying, that they support the proposal, but made a few suggestions. The DMR asked that lands adjacent to Coastal Preserves be excluded from the RGP, they requested a 7-day Public Notice that the RGP should only be used for residential and institutional developments, and the applicant should provide evidence showing their project would not increase flooding to adjacent lands.

The DMR did not respond to the second public notice. They did however issue Coastal Zone Management authorization, by letter dated March 14, 2007.

f. **Mississippi Department of Environmental Quality (DEQ)**: DEQ responded to the first public notice, by letter dated December 6, 2006, that: 1) the public notice was not a “Joint” PN; 2) how would attendant features be defined?; 3) requested clarification on the definition of tidal waters and non-tidal wetlands; 4) requested clarification on how previously permitted mitigation areas would apply to permit modifications that remove mitigation requirements from on-site wetland areas and proposed permit actions on the same previously approved mitigation areas; 5) the RGP should not authorize activities within stream channels that would result in the destruction of the natural stream characteristics that are vital to the protection of water quality; 6) concerned with impacts to perennial streams and believes these impacts are not minimal; 7)

the applicant should be required to provide previous permits if any; 8) mitigation should be as close to project site as possible and within the State; 9) the applicant should provide all necessary local approvals and show that the project would not increase flooding on adjacent lands; 10) only residential and institutional developments should be authorized by this RGP; 11) DEQ needs a 7-day PN comment period; 12) the RGP should address the issue of impacts to waters listed as 303 (d) impaired water bodies and should be coordinated with DEQ so they can make this determination; 13) the applicant should provide documentation that wastewater treatment has been provided; 14) the applicant should address temporary impacts; 15) applicant should be required to clearly state how their proposal relates to redevelopment due to Hurricane Katrina; 16) should include administrative tracking requirements to evaluate the extended need for such authorizations.

The DEQ did not respond to the second public notice. They did however issue water quality certification by letter dated March 28, 2007. In a conference call on February 1, 2007, the DEQ indicated that they were satisfied with the USACE change to the RGP and had no recommendations for improvement.

g. **Dauphin Island Sea Lab**: Dauphin Island Sea Lab responded to the first public notice, by letter dated October 27, 2006, that: 1) mitigation should be within the same watershed as the impacts; 2) the RGP will lead to accelerated loss of the most cost effective flood mitigating system there is; 3) the only difference between a project covered by an IP and the RGP is the public comment period being waived. This means the USACE will have to do all that it does for an IP, only faster; 4) the RGP will be self-reporting and self-regulating.

The Dauphin Island Sea Lab did not respond to the second public notice.

h. **Public Employees for Environmental Responsibility (PEER)**: PEER responded to the first public notice, by letter dated December 8, 2006, that: 1) the RGP would result in more than minimal impacts to aquatic ecosystems; 2) the RGP fails to protect the region from flooding; 3) the RGP fails to require sufficient information from prospective permittees to allow the USACE to make an informed decision on the impacts associated with the proposed fill; 4) the RGP relies too heavily on potentially unqualified permittees to provide scientific information to the USACE, and; 5) the RGP is vague and unenforceable.

PEER responded to the second public notice, by letter dated March 9, 2007. The letter was written on behalf of the Gulf Restoration Network and Environmental Defense. PEER commented that: 1) the RGP would result in more than minimal impacts to the aquatic ecosystem, and fail to protect the region from flooding; 2) they do not like that "adjacent" is being defined as 200-feet from tidal waters. PEER believes this does not protect better than the current regulations/definitions; 3) Special Condition 6 (low-quality wetlands and assessing them using WRAP) relies on undefined terms and an inappropriate wetland assessment methodology, and therefore is vague and unenforceable (low-quality was not defined); 4) the special condition that prohibits work that may have secondary or cumulative effects to estuarine, marine emergent, and/or submerged aquatic vegetation is vague and unenforceable; 5) ALL

stream impacts, including road crossings should receive an Individual Permit; 6) “beef up” stream definition to say impacts to perennial, intermittent and ephemeral streams; 7) limit one stream crossing per project site; 8) the applicant should be required to submit pre-project hydraulic flows, water quality data, and flood data; 9) the proposed requirements for mitigation are inadequate to compensate for wetland losses; 10) reduce the fill limit to ½ acre or less.

i. **Mississippi Wildlife Federation**: The Mississippi Wildlife Federation responded to the first public notice, by letter dated December 8, 2006, that: 1) the proposed RGP increases the risk of flooding and flood damage, ignoring the USACEs public interest review; 2) the USACE may not justify its RGP as a means of managing its permit workload; 3) the RGP authorizes activities that are not similar in nature, in violation of 404 (e); 4) the RGP authorizes activities that are not minimal in impact, in violation of 404 (e); 5) NWP 39 is available for expedited review of residential, commercial, and institutional developments impacting non-tidal wetlands.

The Mississippi Wildlife Federation responded to the second public notice, by letter dated March 8, 2007, that: 1) the RGP results in more than minimal impacts to the aquatic ecosystem; 2) the RGP fails to protect the region from flooding; 3) the RGP fails to require sufficient information from prospective permittees to allow the USACE to make an informed decision on the impacts associated with the proposed fill; 4) the RGP relies too heavily on potentially unqualified permittees to provide scientific information to the USACE; is vague and unenforceable, and contrary to existing regulations; 5) the Mississippi Wildlife Federation would like to see on-site mitigation for all projects that result in any impacts to flood storage or water purification values.

j. & k. **National Wildlife Federation (NWF) and the Natural Resources Defense Council (NRDC)**: The NWF and NRDC responded to the first public notice, by letter dated December 8, 2006. They provided the same comments that the Mississippi Wildlife Federation provided. The National Wildlife Federation and Natural Resources Defense Council responded to the second public notice by letter dated March 9, 2007. They provided the same comments as the Sierra Club’s second public notice comments (See p. below).

l. **Ducks Unlimited**: Ducks Unlimited responded to the first public notice, by letter dated December 8, 2006, that: 1) the RGP goes beyond redevelopment and allows for new development, which is contrary to the stated purpose of the RGP; 2) the individual and cumulative impacts to wetlands is greater than stated and should be withdrawn based upon the lack of scientific assessment of cumulative impacts, i.e. “cause only minimal individual and cumulative impacts” as stated in RGP; 3) the RGP would remove these projects from the public notice process and scrutiny by the public or other agencies; 4) wetland quality using WRAP is subjective and even low-quality wetlands serve a vital role; 5) the RGP will increase flooding and flood risk to properties. The RGP is counterproductive and would be a safety issue if implemented; 6) “timely issuance of permits” should not be a consideration in issuing this RGP. The USACE has a regulatory obligation to protect wetlands.

Ducks Unlimited did not respond to the second public notice.

m. **Audubon Society:** The Audubon Society responded to the first public notice, by letter dated December 10, 2006, that: 1) the RGP should limit development to pre-Katrina developed areas; 2) the RGP should exclude areas within or adjacent to the Pascagoula River Wildlife Management Area in Jackson and George Counties; 3) the RGP goes against the MOU between the Audubon Society and the USACE; 4) the 5-acre limit should be revised to be more reasonable; 5) low-quality wetlands should be better defined and stream channelization would cause significant adverse impacts; 6) federally-listed species surveys should extend to adjacent properties; 7) fills within 100-year floodplains should not be authorized; 8) the RGP should include exclusion areas to Important Bird Areas (IBA).

The Audubon Society did not respond to the second public notice.

n. **Tulane University:** Tulane University responded to the first public notice, by letter dated December 10, 2006, that: 1) the USACE must conduct a Public Hearing prior to issuing a General Permit; 2) the USACE should afford the public the opportunity to review and comment on the USACE decision document prior to issuance of any RGP, so they can make comment on the necessity for an EIS; 3) the USACE should go out on another PN if any changes are made; 4) the RGP is contrary to the NWP program since NWPs have been determined to have minimal impacts; 5) activities, covered in the RGP, are not similar in nature, as required by the CWA; 6) the RGP allows activities that will have more than minimal individual and cumulative impacts; 7) most of the conditions are useless, since the USACE no longer inspects the projects prior to or after completion; 8) the 5-acre limit will result in major impacts and is arbitrary and capricious and its applicability is not defined; 9) prohibiting the work in tidal waters or non-tidal wetlands adjacent to tidal waters does not sufficiently minimize impacts; 10) the restriction of development to only low-quality wetlands as determined by a WRAP will not ensure minimal impacts; 11) mitigation requirements do not suffice to render the impacts minimal; 12) fills within 100-year floodplains cannot minimize the impact of the RGP on flooding; 13) the USACE must evaluate cumulative impacts by looking at past, present, and reasonably foreseeable future actions; 14) Biloxi alone has recently experienced 1736% in commercial growth; 15) when conducting its cumulative impacts analysis, the USACE must consider the plan of the region to be a new Las Vegas; 16) the USACE should not attempt to make a minimal impact determination without fully assessing and considering the status of Mississippi wetlands; 17) NWP-26 was revoked for a reason and the USACE has evolved through the years by reducing the amount of impacts associated with NWPs to ½-acre and deemed this acreage minimal; 18) the USACE cannot ensure that dredged or fill material is not discharged in a manner that jeopardizes endangered or threatened species; 19) the USACE's analysis of environmental impacts under NEPA must result in a finding of significant impact and therefore an EIS must be done.

Tulane University responded to the second public notice, by letter dated March 12, 2007, that: 1) activities allowed under the RGP are not similar in nature as required by the Clean Water Act; 2) the RGP allows activities that will have more than minimal individual and cumulative impacts; 3) the lack of compliance monitoring personnel at the Mobile District renders many of RGP SAM-20's special conditions useless; 4) the proposed RGP SAM-20's special conditions

do not ensure that its impacts are minimal; 5) the three-acre limit in special condition 2 will result in major impacts and is arbitrary and capricious; 6) special condition 4 prohibiting work under RGP SAM-20 in tidal waters or non-tidal waters within 200 feet of tidal waters does not sufficiently minimize the impacts; 7) the restriction of development to only "low quality wetlands," as determined by a WRAP assessment, will not ensure minimal impacts; 8) RGP SAM-20's mitigation requirements in special condition 14 do not suffice to render the impacts minimal; 9) the USACE must evaluate cumulative impacts by looking at past, present, and reasonably foreseeable future actions; 10) when conducting its cumulative impacts analysis, the USACE must consider the plan of the region to be a new Las Vegas; 11) the USACE should not attempt to make a minimal impact determination without fully assessing and considering the status of Mississippi wetlands; 12) the USACE cannot ensure that dredged or fill material is not discharged in a manner that jeopardizes endangered or threatened species; 13) the USACE's analysis of environmental impacts under NEPA must result in a finding of significant impact and, therefore, an EIS must be done.

o. **Stanford Legal Clinic**: Stanford Legal Clinic responded to the first public notice, by letter dated December 8, 2006, that: 1) the RGP allows for new development and is not restricted to redevelopment as proposed; 2) the RGP increases the risk of flooding and the risk of future hurricane damage; 3) the RGP provides insufficient procedure for identifying low quality wetlands; 4) the RGP sets ineffective "original fill" standards; 5) the RGP violates the CWA GP requirements; 6) the RGP permits activities that are not similar in nature; 7) the RGP permits projects that will have more than minimal impacts; 8) the RGP fails to account for environmental impacts, again failing the minimal impacts standard; 9) the RGP runs contrary to NEPA; 10) the RGP fails to meet the EA requirements for GP's; 11) no EA was issued for the RGP, nor does the proposed RGP even refer to an existing EIS; 12) the RGP is contrary to the pre-Katrina EIS; 13) the RGP inappropriately encourages piece-mealing.

Stanford Legal Clinic responded to the second PN, by letter dated March 9, 2007, that: 1) the proposed RGP provides a flawed procedure for identifying "low quality" wetlands; 2) the proposed RGP sets ineffective "original fill" standards; 3) the proposed RGP gives the false impression that inspections will occur to enforce permit conditions; 4) the proposed RGP contains unacceptably ambiguous provisions for renewal; 5) the proposed RGP provides a vague, unenforceable, and improper definition of tidal adjacency; 6) the proposed RGP is inconsistent with the purposes of the CWA; 7) the proposed RGP violates the CWA general permit requirements; 8) the proposed RGP permits activities that are not similar in nature; 9) the proposed RGP permits projects that will have more than minimal impact; 10) the proposed RGP fails to account for environmental impacts, again failing the minimal impacts standard; 11) the proposed RGP fails to meet the EA requirements for general permits; 12) no EA was issued for the initial or revised RGPs, nor has either version even referred to an existing EIS; 13) the proposed RGP remains contrary to the pre-Katrina EIS; 14) the proposed RGP inappropriately encourages piece-mealing.

p. **Sierra Club**: The Sierra Club responded to the first public notice, by letter dated December 8, 2006. They provided the same comments that the Mississippi Wildlife Federation

made. The Sierra Club responded to the second public notice, by letter dated March 9, 2007, that: 1) the proposed RGP authorizes activities that are dissimilar; 2) the proposed RGP authorizes activities that have greater than minimal impacts; 3) the mitigation provisions of the RGP are unreasonable.

q. **Sierra Club (Mississippi Chapter)**: The Sierra Club, Mississippi Chapter, responded to the first public notice, by letter dated October 18, 2006, that: 1) the USACE has not adequately considered alternatives, which include building on uplands and previous building sites; 2) this RGP would cause major cumulative adverse impacts.

The Sierra Club (MS Chapter) did not respond to the second public notice.

r. **Wise Use Movement**: Wise Use Movement responded to the first public notice, by letter dated October 20, 2006, that: 1) the RGP should not allow development in floodplains; 2) there is no evidence that all six counties require relief for redevelopment; 3) this RGP will lead to more wetland loss; 4) the RGP does not comply with the Clean Water Act; 5) the RGP does not comply with the 404(b)(1) Guidelines; 6) the RGP does not comply with 40 CFR 230.10(a)(3) concerning "water dependency"; 7) the RGP does not allow for public participation/comments on each application; 8) the USACE has no Congressional authority to issue a RGP for a geographic area smaller than a state; 9) residential, commercial, and institutional developments are not similar in nature; 10) an EIS should be prepared.

Wise Use Movement responded to the second public notice, by letter dated March 11, 2007, that: 1) the proposed RGP fails to comply with the Clean Water Act because it fails to restore and maintain the chemical, physical and biological integrity of our nation's wetlands; 2) the RGP would contribute to a significant adverse impact to the environment; 3) the RGP would help destroy the biological integrity of southern Mississippi wetlands by allowing filling for non-water dependent uses in five acre chunks; 4) the RGP is contrary to the Federal Clean Water Act because it does not restore or maintain our nation's wetlands; 5) the proposed RGP relies on wetland mitigation banks for mitigation of non-water dependent wetland filling. This continues an illegal wetland mitigation banking program which fails to incorporate public participation in the administration and enforcement of such wetland mitigation banks and, therefore, will contribute to a significant adverse impact to the environment; 6) the proposed RGP fails to comply with the 404(b)(1) guidelines by allowing applicants to use illegal wetland mitigation banks to avoid the practicable alternatives test. This will contribute to a significant adverse impact to the environment. 40 CFR 230.6(d) of the 404(b)(1) guidelines which exempt general permits from alternatives analysis at the time when activities are conducted under a general permit is itself contrary to the Clean Water Act. The RGP is contrary to 33 CFR 320.4 because the RGP is specifically designed to allow wetland filling without an alternatives analysis; 7) the proposed RGP fails to comply with 40 CFR 230.10(a)(3) by continuing to allow the USACE to issue general permits for activities which are not "water dependent."; 8) the RGP is contrary to the Federal Clean Water Act because the USACE has no Congressional authority to issue a RGP for a geographic area smaller than a state; 9) the RGP is contrary to the Federal

Clean Water Act because it does not cover a category of activities similar in nature; 10) Wise Use Movement requests that an Environmental Impact Statement (EIS) be prepared.

s. **Cynthia Henderson**: Cynthia Henderson responded to the first public notice, by letter date stamped November 13, 2006, that: 1) WRAP is subjective and the USACE should use other methodologies such as HGM; 2) mitigation areas, restrictive covenants, or easements, should be in GIS format and available to the public.

Cynthia Henderson did not respond to the second public notice.

t. **Public**: We received approximately 3,500 comments from the public on the first public notice (approximately 3,000 against and 500 in favor of the proposed RGP). We received approximately 450 comments from the public on the second public notice. All 450 comments objected to the issuance. The second round of comments can be summarized by the following comments, since they primarily were form letters: 1) the proposed RGP increases the risk of flooding and flood damage; 2) the USACE may not justify its RGP as a means of managing its permit workload. The District attempts to justify the RGP as necessary to "reduce the burden of the regulatory program on the public and ensure timely issuance of permits." However, speedy approval of wetlands destruction activities is not a valid objective under the Clean Water Act. The USACE has the burden to prove that such an RGP is necessary and in the public interest; 3) limiting the RGP to "low value" wetlands does not ensure that only minimal impact activities are authorized. Clean Water Act § 404(e) limits all general permits to categories of activities that will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect. The Mobile District' scaled back RGP would still authorize 6 times the ½ acre wetland fill limit that the USACE allows for similar activities under nationwide permits; 4) the proposed RGP will prevent full consideration of less damaging alternatives. All efforts to avoid unnecessary destruction of Mississippi's coastal wetlands should be pursued. Although the RGP application would contain a statement regarding avoidance and minimization, full and serious consideration of alternative, less damaging locations and designs for projects can only be expected to occur through the standard, individual permitting process. In addition, many wetlands that provide important flood storage, water quality, wildlife habitat, and other functions and values will likely be identified as "low value" and will be filled under the District's proposal, whereas these wetlands could be ideal candidates for restoration, to improve environmental conditions; 5) complete reliance on mitigation banks to provide compensatory mitigation is unacceptable. The USACE continues to propose to rely exclusively on mitigation banks to provide compensation for wetlands impacts, and for some stream impacts, with no consideration that project-specific mitigation may be preferable to ensure, or approximate, replacement of wetland functions; 6) while the revised proposal is an improvement over the last, it fails to protect coastal communities from flooding and needs to be withdrawn; 7) the individual and cumulative environmental impacts from this proposal would be significant. Because of its vulnerability to flooding, the entire Mississippi coast deserves strong wetland protection, not rules that remove the ability of the public to review permits. There has been no demonstration that the proposed regional general permit is either necessary or in the public interest; 8) I would also like to request that the Army Corps of Engineers hold a

public hearing on this proposal so that citizens can present testimony on the value of Mississippi's coastal wetlands and specific examples of ways that local residents will be impacted by this proposal.

u. **Environmental Advisory Board (EAB)**: On October 27, 2006, a teleconference was held between USACE Mobile District Regulatory Division Staff (David Hobbie and Tunis McElwain) and the Chief of Engineers Environmental Advisory Board (EAB) members. The USACE staff stated that the EAB's comments were welcome and that the EAB's input was valued. The USACE explained the regulatory permitting program and the difference between an Individual Permit and a General Permit, it was stressed that both adhere to the 404(b)(1) Guidelines that mandate avoidance, minimization, and mitigation.

The EAB stated that they were concerned that the proposed RGP may impact restoration projects that are part of the MSCIP program being conducted by the USACE Mobile District Planning Division. The USACE staff informed the EAB that changes to the proposed RGP were likely and that we would remove the MsCIP restoration projects from the geographic boundary of the proposed RGP. The USACE staff also stated that the Regulatory Division would increase communication and coordination with the Planning Division.

The EAB also expressed concern about the acreage impact and how low quality wetland would be determined. The EAB concern was that the proposed 5 acre impact was precedent setting and rather large. A brief discussion was held concerning the Regional General Permit 46 in the Vicksburg District that authorizes up to 7 acres of impact for Mississippi Department of Transportation projects. The USACE staff stated that there was a need for an RGP authorizing 5 acres of impact based on historic permitting data, but an impact acreage reduction would be considered. The USACE staff also described WRAP briefly and stated that it is an accepted methodology used in the Mobile District and other Corps Districts. The WRAP assessment would determine whether or not a wetland is low quality.

On March 13, 2007, a teleconference was held between USACE Mobile District Staff (Col. Taylor, Carol Bernstein, Tunis McElwain, and Susan Rees) and the Chief of Engineers Environmental Advisory Board (EAB) members. Issues discussed include environmental justice, data entry, and process questions. The EAB indicated that they appreciated the District cooperation and that their critical comments had been addressed through the revisions to the proposed RGP. Col. Taylor provided a description of the proposed RGP and all of the revisions since the initial public notice.

2) USACE Analysis of Comments and Responses

Analysis by Topic:

a) **Aquatic Resource of National Importance (ARNI)**: Both the EPA and FWS stated that the proposed RGP may result in substantial and unacceptable impacts to aquatic resources of national importance (ARNI); in accordance with the procedural requirements of the 1992 404(q)

Memorandum of Agreement (MOA), Part IV 3(a). The USACE does not agree that the proposed RGP would impact ARNI's because the RGP would only authorize impacts to low quality, non-tidal wetlands. The USACE has determined that impacts from issuance of this RGP will be minimal, as a result of the terms and conditions of the RGP that include mitigation. Non-tidal wetlands adjacent to tidal waters are also excluded from the proposed RGP. The low quality determination would be made using an established functional assessment methodology, WRAP. Each WRAP assessment received would be reviewed by the USACE to ensure that the wetlands are low quality.

Under the 1992 404(q) MOA, the EPA and FWS have until the 25th day after the end of the public notice comment period to send a paragraph 3.b. letter. The 3.b. letter would state that the project "will" impact an ARNI. Even though the EPA and FWS did not send a 3.b. letter, USACE continued coordination efforts to address their concerns and modified the proposed RGP. During a conference call on February 1, 2007, both agencies indicated that they agreed with the changes and appreciated the continued coordination.

b) No Notice to Agencies/Public: The FWS, DMR, DEQ, Tulane University, and the Wise Use Movement expressed concerns about agency and public involvement into the permitting process under the proposed RGP. To increase agency input, a 7-day (working day) coordination period between the USACE and the State and Federal Agencies has been added to the current proposal. To better inform the public of permitting actions, the USACE would post each verification of RGP SAM-20 on our website monthly.

c) Cultural and Historic Resources (Section 106): The MDAH and Ducks Unlimited expressed concerns about cultural and historic resources. To address those concerns, the USACE will coordinate with the SHPO on every application requesting authorization under this RGP.

The special conditions of the RGP that address Cultural and historical resources are as follows:

1) "No registered properties or properties listed as eligible for inclusion in the National Register of Historic Places shall be affected. Permit submittal must include either a Phase I survey or a letter from the State Historic Preservation Officer, for Mississippi, confirming that no impacts to known cultural/historical resources will occur on the project site.", 2) "Should artifacts or archaeological features be encountered during project activities, work shall cease and the Mississippi State Historic Preservation Officer and the U.S. Army Corps of Engineers, Mobile District, Regulatory Division shall be consulted immediately. The USACE 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.", and 3) "In the event any items falling under Native American Graves and Repatriation Act (NAGPRA) are discovered during construction, the appropriate persons, including state and tribal NAGPRA representatives will be notified immediately for further consultation."

If the Phase I survey indicates that no cultural/historical resources are present, then the USACE will make a no effects determination and state this in the coordination with SHPO. If SHPO

disagrees with the determination, then the project will be either elevated to an IP or the project will be held in abeyance until SHPO has issued final clearance for the project to be verified under the RGP.

These special conditions ensure that impacts to cultural and historical resources will be minimal.

d) Endangered Species Act (ESA): The FWS, the Audubon Society, and Tulane University expressed concerns about the proposed RGP's impacts on endangered species. To address the concerns, the USACE would coordinate every application, requesting authorization under this RGP, with the FWS for threatened and/or endangered species. Special conditions were also developed that ensure minimal ESA impacts.

The RGP states, "No authorization shall be granted for any project that may affect any threatened or endangered species and/or their critical habitats. Permit submittal must include a Federally-listed threatened and endangered animal and plant species survey. If Federally-listed animal and/or plant species are found on the site, no activities will be authorized until the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service have completed consultation on the project. No activity shall be authorized which: 1) may affect: any other Federally-listed threatened or endangered species; or 2) may destroy or adversely modify: designated critical habitat for any Federally-listed threatened or endangered species."

e) Flooding: The FEMA, DEQ, Dauphin Island Sea Lab, PEER, the Mississippi Wildlife Federation, NWF, NRDC, Ducks Unlimited, Audubon Society, Tulane University, Stanford Legal Clinic, Sierra Club, the Mississippi Chapter of the Sierra Club, the Wise Use Movement, and other members of the general public expressed concerns that the proposed RGP would increase flooding. To address those concerns, a special condition was added to exclude the RGP from within 100-year floodplains, as documented by Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps. This RGP would not allow developments within the currently approved FEMA designated 100-year floodplains. If the FEMA approved floodplain maps are revised, the FEMA approved revised maps will be used. In addition, another special condition of the RGP reads, "No activity, authorized by this permit, shall increase flooding onto adjacent properties."

f) 404(b)(1) Guidelines: The FWS, EPA, DEQ, Dauphin Island Sea Lab, the Mississippi Wildlife Federation, NWF, NRDC, Tulane University, Sierra Club, the Wise Use Movement, Cynthia Henderson, and other members of the public expressed concerns that the proposed RGP would not comply with the 404(b)(1) Guidelines. The USACE disagrees. The proposed RGP would require all applicants to avoid, minimize, and mitigate for impacts to jurisdictional waters of the United States; as required by the 404(b)(1) Guidelines. A more thorough discussion of how this RGP complies with the 404(b)(1) Guidelines can be found in Section 16 below.

g) Acreage Limit: The FWS, EPA, DEQ, PEER, the Mississippi Wildlife Federation, NWF, NRDC, Ducks Unlimited, Audubon Society, Tulane University, Stanford Legal Clinic, the Sierra Club, the Mississippi Chapter of the Sierra Club, the Wise Use Movement, and other members of

the public expressed concern with the size of the impact under the proposed RGP and the cumulative impact of the proposed RGP.

To address the concerns related to the size of the impact, the proposed RGP has been revised to reduce wetland impacts from 5 acres to 3 acres. The RGP was also revised to add 8 new exclusionary zones where the RGP would not be used. The exclusion areas are as follows: Historical Preserves or parcels/tracts abutting these lands; National Estuarine Research Reserves or parcels/tracts abutting these lands; National Wildlife Refuges or parcels/tracts abutting these lands; Coastal Preserves or parcels/tracts abutting these lands; Conservation Lands, Conservation Easements, Conservation Trusts, USACE required mitigation areas or parcels/tracts abutting these lands; Pascagoula River Wildlife Management Area or parcels/tracts abutting these lands; Important Bird Areas (IBA), as defined by the National Audubon Society, or parcels/tracts abutting these lands; Within or abutting projects that are currently being formulated as part of the Mississippi Coastal Improvements Program comprehensive plan for hurricane storm damage reduction and environmental restoration. The MsCIP will identify those areas within the 3 southern coastal counties (Jackson, Harrison, Hancock) which are considered priority for possible evacuation of structures with subsequent environmental restoration; Within the Turkey Creek watershed; Within 100-year floodplains, as documented by Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps.

The cumulative impact of the RGP would be minimal, in part, because of the narrowly defined geographic boundary where it could be used. A more detailed discussion of the cumulative impact associated with the proposed RGP can be found in Section 13 a.(24) below. The USACE has determined that with the conditions required by the proposed RGP, cumulative and secondary effects would be minor.

h) Similar in Nature: The Mississippi Wildlife Federation, NWF, NRDC, Tulane University, Stanford Legal Clinic, Sierra Club, the Mississippi Chapter of the Sierra Club, and the Wise Use movement stated that the proposed RGP would authorize impacts that are not substantially similar in nature. To ensure that the proposed RGP would only authorize impacts that are similar in nature, the proposal has been revised to authorize impacts to residential developments only. Residential developments are similar in nature by providing a place to live, where commercial and institutional do not. Residential developments, such as small subdivisions or apartment complexes that may be authorized by this RGP, will have a similar footprint because of the impact restrictions of 3 acres or less. Commercial and institutional developments are often subject to different state and local requirements than residential developments, such as storm water management and infrastructure requirements. Planning and zoning requirements for residential, commercial, and institutional developments may also be different, which can affect where they are located in a watershed. Commercial and institutional developments would not be authorized under this RGP.

i) Water Quality: The FWS and DEQ expressed specific concerns about water quality. The

Special Conditions of the proposed RGP, dealing with best management practices, would ensure that the proposed RGP would not have a negative impact on water quality. These special conditions can be found in Section 13 a.(15) below. Thorough discussions of water quality impacts of this RGP can be found in Section 13 a.(15) below. The DEQ also issued Section 401 Water Quality Certification for the proposed RGP. Regulations at 33 CFR Part 320.4(d) state, "Certification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration." The Regional Administrator for EPA Region IV has not raised additional water quality concerns. Additionally, the EPA and DEQ will have an opportunity to review all applications received under the proposed RGP. If DEQ has water quality concerns about a particular project, they can be raised during the coordination process.

j) Wetland Rapid Assessment Procedure (WRAP): The FWS, PEER, Ducks Unlimited, Tulane University, Stanford Legal Clinic, and Cynthia Henderson raised concerns about the use of WRAP to determine the quality of wetlands to be impacted under the proposed RGP. WRAP is an accepted and valid functional assessment tool utilized by multiple USACE Districts within the South Atlantic Division. WRAP is also a nationally recognized methodology as referenced in RGL 02-2. The methodology is generally accepted and repeatable with consistent results. The USACE will review all WRAP scores submitted and have the final determination concerning the quality of wetlands. Only low quality wetlands would be impacted by the proposed RGP. A more thorough explanation of WRAP can be found below in Section 16 (a)(5).

3) Point by Point Analysis of Comments: The discussion of the comments above is divided by general category of concern raised in response to the two public notices generated to inform all interested parties of the proposal to develop this RGP. Comments other than those listed were received, reviewed, and taken into consideration by the USACE. To ensure that every comment was addressed, a point by point response was generated and attached to this document as Appendix A.

11. Public Hearing Request: We received approximately 3,450 comments requesting a public hearing (from both the first and second public notice). The following is a brief synopsis of activities conducted by the Mobile District (SAM) designed to solicit views, opinions, and information from the public regarding issuance of the RGP:

- 10 Oct 06: SAM issued Public Notice (PN) for proposed Regional General Permit (RGP), with a public comment period ending on November 10, 2006
- 20 Oct 06: SAM extended the time to comment on the proposed RGP for an additional 30 days.
- 26 Oct 06: Conference call: Representatives from the Environmental Advisory Board (EAB), SAM (Mobile District Representatives), SAD (South Atlantic Division), HQUSACE, IWR (Institute for Water Resources).

- 20 Nov 06: SAM participated in a joint public workshop with the MS Department of Marine Resources (DMR). Attendees included the general public, consultants, and members of the building industry.
- 21 Nov 06: SAM representatives (Tunis McElwain, Jason Steele and Marilyn Phipps) met with members of the Sierra Club to discuss their concerns.
- 3 Jan 07: Interagency meeting to discuss comments/objections. Attendees included: EPA, DMR, MS Department of Environmental Quality (DEQ), and SAM.
- 10 Jan 07: SAM called USFWS and briefed them on the 3 Jan 07 meeting, since they were unable to attend.
- 1 Feb 07: Interagency conference to discuss comments/objections. Attendees included: EPA, USFWS, DMR, DEQ, and SAM.
- 9 Feb 07: SAM issued final PN that included agreed upon revisions.
- 19 Mar 07: Conference call with the EAB to discuss their concerns.

A public hearing is not held unless it is expected to provide additional information necessary to make a decision on the application. It has been determined that a public hearing would not benefit the decision-making process on this RGP. A public hearing denial letter was sent on April 5, 2007, to the commenters, advising them of the public hearing denial.

12. Alternatives Analysis [33 CFR 320.4(b), 40 CFR 230.10]

a. Do Not Issue the Regional General Permit: To not issue the RGP would not achieve the goal of this RGP, which is to facilitate residential housing development in the lower six counties of Mississippi through a streamlined permit process that ensures the protection of aquatic resources. To not issue the RGP is the same as the no action alternative which would also negatively impact the USACE's ability to pursue the current level of review for other activities that have greater adverse effects on the aquatic environment, including activities that impact high-quality wetlands.

If this RGP is not available, substantial additional resources would be required for the USACE to evaluate these activities through the individual permit process. Although invaluable information is provided to the USACE by public comment on proposed projects, in fact in most public notices published by the USACE typically do not receive responses from either the public or Federal and state resource agencies. Another important benefit of this RGP that would not be achieved through the no-action alternative is the incentive for project proponents to design their projects so that those activities meet the terms and conditions of this RGP. The RGP would reduce adverse effects to the aquatic environment because most applicants would modify their projects to comply with the RGP and avoid the delays and costs typically associated with the individual permit process.

Mitigation under the no-action alternative would consist of some combination of on-site and off-site mitigation, possibly resulting in fragmented mitigation as projects are evaluated under the IP process. Since the only option for mitigation under the proposal is purchasing credits at established mitigation banks, the proposed RGP would ensure the protection and maintenance of

large tracts of consolidated wetlands that make up mitigation banks. The use of mitigation banks also reduces the temporal losses of aquatic functions and values and reduces uncertainty over the ecological success of the mitigation.

In the absence of this RGP, Department of the Army (DA) authorization in the form of Individual Permits would be required. The regulated public would be adversely affected by the time delays associated with obtaining an Individual Permit, and housing redevelopment in Coastal Mississippi delayed. Because of the current critical need for housing, it is reasonable to assume that the projects associated with the use of this RGP would still likely be built, and the impacts to low-quality wetlands would still likely occur regardless of whether RGP or IP processing were in place.

b. Issue the Regional General Permit: The preferred alternative is to issue the RGP in its revised format. This format includes the following changes: 1) reducing the wetland acreage limit which changed from 5 acres to 3 acres, 2) expanding excluded areas which resulted in the addition of 8 new excluded areas, 3) establishing a coordination period for State and Federal agencies which was not initially required; now there is a 7-day coordination period, 4) clarifying the terms “tidal” and “adjacent”, 5) eliminating institutional and commercial developments, 6) adding 30-foot stream buffers, 7) prohibiting stream channelization or relocation, and 8) adding a special condition that the development cannot result in post-construction conditions that would flood adjacent properties.

Each permit application, reviewed under this proposed RGP, must include a statement from the applicant explaining how the project was designed to minimize impacts to waters of the United States. If the USACE determines that impacts are more than minimal, then the USACE will process the application under the IP process. The USACE will make a minimal effects determination based on what the applicant’s purpose and need is without impacting wetlands or with minimizing impacts to wetlands onsite. If the USACE determines that the project does not meet the minimal effects criteria, then the USACE would notify the applicant that their project does not qualify for the RGP and the USACE will proceed with processing an IP.

Each application for use of this RGP will be individually reviewed. The RGP would require the permittee to minimize and avoid impacts to on-site waters of the United States to the maximum extent practicable. During the evaluation of a request for authorization, the District Engineer may determine that additional avoidance and minimization is practicable and require the project to be revised before authorization under the RGP is granted. The RGP would also be conditioned to require compensatory mitigation to offset losses of waters of the United States and ensure that the net adverse effects on the aquatic environment are minimal. The RGP is written and conditioned such that impacts are expected to be minimal. If the proposed work would result in more than minimal adverse effects on the aquatic environment, then the District Engineer would exercise discretionary authority and require an Individual Permit. Discretionary authority can be asserted where there are concerns for the aquatic environment. A copy of the proposed RGP, along with a map of currently available exclusion areas, 100-year floodplains, IBAs, and approved MsCIP projects, can be found in Appendix B.

c. Conclusions of Alternatives Analysis: Given the environmental benefits of the proposed regional permit and the concomitant regulatory streamlining, the proposed regional general permit is considered the least damaging practicable alternative taking into account that each application will be individually reviewed, each permit will require mitigation to offset the functions and values lost by the permitted action, and each permit will have special conditions that the applicant must adhere to.

13. General Policies for Evaluating Permit Applications (33 CFR 320.4 (a-r))

a. Public Interest Review: The consideration of conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, and in general the needs and welfare of the people are outlined below. The decision whether to issue the RGP will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.

Table 6 is a summary of our public interest review for the proposed activity, which assesses the impacts of the proposed permit action on environmental and other public interest factors (33 CFR 320.1(a)(1), 320.4 and 325.3(c)).

Table 6 Summary of Project Impacts

FACTORS	No Effect	Negligible	Undetermined	Beneficial Major/ Minor	Adverse Major/ Minor
1. Conservation		X			
2. Economics				X	
3. Aesthetics		X			
4. General Environmental Concerns					X
5. Wetlands					X
6. Cultural/Historical Properties	X				
7. Fish & Wildlife Values					X
8. Flood Hazards				X	
9. Floodplain Values	X				
10. Land Use					X
11. Navigation	X				
12. Shore erosion and accretion	X				
13. Recreation					X
14. Water Supply & Conservation					X
15. Water Quality		X			
16. Energy Needs		X			
17. Safety		X			
18. Food & Fiber Production					X
19. Mineral Needs		X			
20. Consideration of Property Ownership				X	
21. Public & Private Need for RGP				X	
22. Unresolved Conflicts/ Alternative Methods	X				
23. Beneficial/Detrimental Effects		X			
24. Cumulative & Secondary Impacts		X			

(1) Conservation: The activities authorized by this RGP may modify the natural resource characteristics of the project area. Compensatory mitigation for activities authorized by this RGP would result in the restoration, enhancement, creation, or preservation of aquatic habitats that would offset losses of conservation values. The adverse effects of activities authorized by this RGP on conservation would be minor. The RGP is excluded in Historical Preserves or parcels/tracts abutting these lands; National Estuarine Research Reserve's or parcels/tracts abutting these lands; National Wildlife Refuges or parcels/tracts abutting these lands; Coastal Preserves or parcels/tracts abutting these lands; Conservation Lands, Conservation Easements, Conservation Trusts, USACE required mitigation areas or parcels/tracts abutting these lands;

Pascagoula River Wildlife Management Area or parcels/tracts abutting these lands; Important Bird Areas (IBA), as defined by the National Audubon Society, or parcels/tracts abutting these lands; within the Turkey Creek watershed; within 100-year floodplains, as documented by Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps; and within or abutting projects that are currently being formulated as part of the Mississippi Coastal Improvements Program comprehensive plan for hurricane storm damage reduction and environmental restoration. The MsCIP will identify those areas within the 3 southern coastal counties which are considered priority for possible evacuation of structures with subsequent environmental restoration.

Therefore, the USACE has determined that this RGP would have a negligible effect on this public interest factor, taking into account the required mitigation for each permit issued under the RGP and the areas excluded from use of the RGP.

(2) Economics: The construction of residential developments would have positive impacts on the local economy. During construction, these activities would generate jobs and revenue for local contractors as well as revenue to building supply companies that sell construction materials. Residential developments provide homes and, in some instances, recreational facilities for citizens. Developments authorized by this RGP would also benefit the community by improving the local economic base, which is affected by employment, tax revenues, community services, and property values. Coastal Mississippi cannot recover from Hurricane Katrina or develop economically without sufficient housing for the population.

Therefore, the USACE has determined that this RGP would have a beneficial effect on this public interest factor by providing jobs, increasing local tax base, and temporarily easing the regulatory burden and allowing residential construction to occur in low-impact areas in a much more timely manner than standard permitting procedures would allow.

(3) Aesthetics: Residential development activities would alter the visual character of some waters of the United States. The extent and perception of these changes would vary, depending on the size and configuration of the development, the nature of the surrounding area, and the public uses of the area and personal views of aesthetic values. The increased human use of the project area and surrounding land would also alter local aesthetic values by changing the overall rural characteristics of the predominantly undeveloped lands located slightly north of the coast.

Since aesthetic values are highly subjective, and there were no comments from the public, state or federal agencies as to aesthetic concerns, the USACE has determined that this RGP would have a negligible effect on this public interest factor.

(4) General environmental concerns: Activities authorized by this RGP would affect general environmental concerns, such as water, air, noise, and land pollution. The authorized work would also affect the physical, chemical, and biological characteristics of the environment. The adverse effects of the activities authorized by this RGP on general environmental concerns would be minor. The RGP authorizes only those activities with minimal adverse effects on the aquatic

environment because of the limited geographic areas to be utilized and the associated mitigation requirements. Mitigation would ensure replacement of functions lost as a result of projects authorized under the proposed RGP, thereby ensuring only minimal impacts. Special conditions require applicants to minimize adverse effects to the aquatic environment through on-site avoidance and minimization.

The Mobile District Planning Division is implementing the Mississippi Coastal Improvements Program (MsCIP), which is a comprehensive plan for hurricane storm damage reduction and environmental restoration. The MsCIP will identify those areas within the 3 southern coastal counties which are considered priority for possible evacuation of structures with subsequent environmental restoration. To ensure no impacts to environmental restoration projects related to the MsCIP, the proposed RGP would be excluded from areas under consideration as part of the MsCIP. Regulatory Division would also coordinate with Planning Division and share information to ensure no projects would be authorized to negatively impact the MsCIP.

Through exclusion areas, mitigation requirements, special conditions, and coordination of each application for use of the RGP, the USACE has determined that this RGP would have minimal impact on water, air, land pollution, and the physical, chemical, and biological characteristics of the environment. However, since the RGP has the potential to effect general environmental concerns, such as noise, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(5) Wetlands: The lower six counties of Mississippi consist of an area approximately 1,960,593 acres and include approximately 478,681 acres of wetlands (Jackson – 223,622 acres, Hancock – 84,515 acres, Harrison – 96,294 acres, Pearl River – 22,686 acres, Stone – 37,374 acres, and George – 14,190 acres). Out of the 478,681 acres of wetlands within the lower six counties, 236,598 acres are within the 100-year floodplain and therefore excluded from being impacted by this RGP. There is no way of determining how many of these remaining 242,083 wetlands are low-quality, but, from past permit actions, we can determine that it would be a very low percentage (approximately 20%) of the 242,083 acres of wetlands for the area. Therefore, it is approximated that 48,416.60 acres of wetlands have the potential to be impacted by this RGP. This figure is based on 100% development of the 6 counties with no avoidance or minimization. The actual impact anticipated within the time-frame of the RGP would be a very small percentage based upon historic trends and expected growth in the area. It is important to note that this wetland acreage figure is based on interpretation of National Wetland Inventory (NWI) maps that loosely correlate with jurisdictional waters of the United States. It is possible that this acreage figure includes non-jurisdictional areas and it is also possible that jurisdictional waters of the United States may be excluded in some cases. The NWI maps are a useful indicator of wetlands and were used as a general indicator. For a more comprehensive analysis of wetland trends, see section 4-170 of the Final Environmental Impact Statement, Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity for Large-Scale Development in Coastal Mississippi, August 2005.

The following is a County by County wetland analysis:

Pearl River County is comprised of 262,513 acres, of which 22,686 acres are wetlands or 9% of its total acreage (according to the NWI maps). Of the 22,686 acres of wetlands, 8,517 acres or 38% of the total wetlands for the county are outside the 100-year floodplain and have the potential of being impacted by this RGP. It should be noted that we could not pull out low-quality wetlands or exclusion areas from the compiled data. Also, since the percentage of wetlands to total land in Pearl River County is relatively low, efforts to avoid and minimize wetland impacts will be greater. Pearl River County is included in the RGP because of the development expected to occur in this county due to rising costs of housing in Jackson, Harrison, and Hancock Counties and the desire to live further inland and away from potential future hurricanes.

George County is comprised of 309,502 acres, of which 14,190 acres are wetlands or 5% of its total acreage (according to the NWI maps). Digital data is not currently available for this area, therefore, we could not utilize the Geographic Information System (GIS) to remove the acreage of wetlands that fall within the floodplains. FEMA has indicated that the most flood-prone areas were digitized first, indicating that these counties experienced flooding to a lesser degree than the lower three counties. It should be noted that we could not pull out low-quality wetlands or exclusion areas from the compiled data. Also, since the percentage of wetlands to total land in George County is relatively low, efforts to avoid and minimize wetland impacts will be greater. George County is included in the RGP because of the development expected to occur in this county due to rising costs of housing in Jackson, Harrison, and Hancock Counties and the desire to live further inland and away from potential future hurricanes.

Hancock County is comprised of 255,652 acres, of which 84,515 acres are wetlands or 33% of its total acreage (according to the NWI maps). Of the 84,515 acres of wetlands, 45,201 acres or 53% of the total wetlands for the county are outside the 100-year floodplain and have the potential of being impacted by this RGP. It should be noted that we could not pull out low-quality wetlands or exclusion areas from the compiled data.

Harrison County is comprised of 373,884 acres, of which 96,294 acres are wetlands or 26% of its total acreage (according to the NWI maps). Of the 96,294 acres of wetlands, 54,325 acres or 56% of the total wetlands for the county are outside the 100-year floodplain and have the potential of being impacted by this RGP. It should be noted that we could not pull out low-quality wetlands or exclusion areas from the compiled data.

Jackson County is comprised of 472,294 acres, of which 223,622 acres are wetlands or 47% of its total acreage (according to the NWI maps). Of the 223,622 acres of wetlands, 82,476 acres or 37% of the total wetlands for the county are outside the 100-year floodplain and have the potential of being impacted by this RGP. It should be noted that we could not pull out low-quality wetlands or exclusion areas from the compiled data.

Stone County is comprised of 286,748 acres, of which 37,374 acres are wetlands or 13% of its total acreage (according to the NWI maps). Digital data is not currently available for this area, therefore, we could not utilize the Geographic Information System (GIS) to remove the acreage of wetlands that fall within the floodplains. FEMA has indicated that the most flood-prone areas were digitized first, indicating that these counties experienced flooding to a lesser degree than the lower three counties. It should be noted that we could not pull out low-quality wetlands or exclusion areas from the compiled data. Also, since the percentage of wetlands to total land in

Stone County is relatively low, efforts to avoid and minimize wetland impacts will be greater. Stone County is included in the RGP because of the development expected to occur in this county due to rising costs of housing in Jackson, Harrison, and Hancock Counties and the desire to live further inland and away from potential future hurricanes.

Discharges of dredged or fill material into waters of the United States for residential development activities may result in the destruction of wetlands. This RGP does not authorize activities in tidal wetlands, in non-tidal wetlands adjacent to tidal waters, or high quality freshwater wetlands. In most cases, the affected wetlands would be permanently filled, especially where buildings, roads, utilities, and other permanent fills are located, resulting in the permanent loss of aquatic resource functions and values. Wetlands may also be converted to other uses and habitat types. Some wetlands may be temporarily impacted by the work through the use of temporary staging areas and access roads. These wetlands would be restored, unless the District Engineer authorizes another use for the area, but the plant community may be different, especially if the site was originally forested. For all activities, compensatory mitigation would be required to offset the loss of wetland functions and ensure that the adverse effects to the aquatic environment are minimal. Wetlands provide habitat, including foraging, nesting, spawning, rearing, and resting sites for aquatic and terrestrial species. The destruction of wetlands may alter natural drainage patterns. Wetlands reduce erosion by stabilizing the substrate. Wetlands also act as storage areas for stormwater and flood waters. Wetlands may act as groundwater discharge or recharge areas. The loss of wetland vegetation would adversely affect water quality because these plants trap sediments, pollutants, and nutrients and transform chemical compounds. Wetland vegetation also provides habitat for microorganisms that remove nutrients and pollutants from water. Wetlands, through the accumulation of organic matter, act as sinks for some nutrients and other chemical compounds, reducing the amounts of these substances in the water. The functions listed above support the need for wetland regulation and the need for the replacement of lost wetland functions. In addition, the functions listed above support the need to limit wetland impacts to low-quality wetlands. As previously stated, any functional loss associated with the proposed RGP would be replaced through compensatory mitigation.

The Wetland Rapid Assessment Procedure (WRAP) analysis required as part of the RGP would determine the level of wetland functions that would be lost as a result of projects authorized under the RGP. The loss of wetland functions would be replaced through the purchasing of an appropriate number of credits at an approved wetland mitigation bank. A more thorough explanation of WRAP can be found below in Section 16 (a)(5).

As part of the notification, for each application, the permittee must submit a statement explaining why the discharge must occur in waters of the United States and why additional minimization cannot be achieved. The RGP is not allowed in tidal waters, wetlands adjacent to tidal waters, high-quality wetlands, and medium-quality wetlands. This RGP is not allowed in waters of the United States within 100-year floodplains.

Although the impacts to wetlands, associated with this RGP are restricted to low-quality wetlands, and mitigation is required for all permits issued under each RGP, wetlands are still impacted as a result of the RGP. Therefore, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(6) Cultural/Historical properties: The RGP has three special conditions concerning cultural/historical properties. These are, 1) No registered properties or properties listed as eligible for inclusion in the National Register of Historic Places shall be affected. Permit submittal must include either a Phase I survey or a letter from the State Historic Preservation Officer, for Mississippi, confirming that no impacts to known cultural/historical resources will occur on the project site.”, 2) “Should artifacts or archaeological features be encountered during project activities, work shall cease and the Mississippi State Historic Preservation Officer and the U.S. Army Corps of Engineers, Mobile District, Regulatory Division shall be consulted immediately. The USACE would 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.”, and 3) In the event any items falling under Native American Graves and Repatriation Act (NAGPRA) are discovered during construction, the appropriate persons, including state and tribal NAGPRA representatives would be notified immediately for further consultation.”

In addition, the SHPO would be coordinated with, prior to permit issuance. If the Phase I survey indicates that no cultural/historical resources are present, then the USACE will make a no effects determination and state this in the coordination with SHPO. If SHPO disagrees with the determination, then the project will either be elevated to an IP or the project will be held in abeyance until SHPO has issued final clearance for the project.

Because there would either be no cultural/historical resources present or no effect to cultural/historical resources, the USACE has determined that this RGP would have no effect on this public interest factor.

(7) Fish and wildlife values: Non-tidal wetlands and streams provide habitat to many species of fish and wildlife. Activities authorized by this RGP may alter the habitat characteristics of streams and wetlands, decreasing the quantity and quality of fish and wildlife habitat. Wetland and riparian vegetation provides food and habitat for many species, including foraging areas, resting areas, corridors for wildlife movement, and nesting and breeding grounds. Open waters provide habitat for fish and other aquatic organisms. Woody riparian vegetation shades streams, which reduces water temperature fluctuations and provides habitat for fish and other aquatic animals. Riparian vegetation provides organic matter that is consumed by fish and aquatic

invertebrates. Woody riparian vegetation creates habitat diversity in streams when trees and large shrubs fall into the channel, forming snags that provide habitat and shade for fish. Impacts to fish and wildlife values, from issuance of this RGP, are expected to be minimal because fish and wildlife functions would be replaced through compensatory mitigation. Notification and coordination is required for all discharges associated with this RGP, which provides the District Engineer and the applicable State and Federal agencies with an opportunity to review the proposed work and assess potential impacts, from specific projects, on fish and wildlife values and ensure that the authorized activity results in minimal adverse effects on the aquatic environment. In addition, this RGP prohibits the channelization or relocation of stream beds.

Compensatory mitigation would be required by the USACE to restore, enhance, create, and/or preserve wetlands and other aquatic habitats to offset losses of waters of the United States. Vegetated buffers next to open and flowing waters may also be required as compensatory mitigation. These methods of compensatory mitigation would provide fish and wildlife habitat values.

In addition, the RGP states, "No authorization shall be granted for any project that may affect any threatened or endangered species and/or their critical habitats. Permit submittal must include a Federally-listed threatened and endangered animal and plant species survey. If Federally-listed animal and/or plant species are found on the site, no activities will be authorized until the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service have completed consultation on the project. No activity shall be authorized which: 1) may affect: any other Federally-listed threatened or endangered species; or 2) may destroy or adversely modify: designated critical habitat for any Federally-listed threatened or endangered species." Also, a special condition of the RGP requires the applicant provide, "A Federally-listed threatened and endangered animal and plant species survey."

Although the RGP may alter the habitat characteristics of streams and wetlands, the RGP has many safeguards in place to minimize overall impacts to fish and wildlife values. These safeguards include coordination with the FWS on every application, mitigation, restrictions on stream impacts and channelization, and buffers along streams, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(8) Flood hazards: As a result of comments from the public and agencies, the USACE conditioned the proposed RGP to state, "No activity, authorized by this permit, shall increase flooding onto adjacent properties." The applicant must demonstrate this prior to permit issuance. Essentially, the only way to demonstrate this is for the applicant to construct stormwater facilities onsite.

Because this is not a normal condition of USACE permits, but is a standard condition of this RGP, the USACE has determined that this RGP would have a minor beneficial effect on this public interest factor.

(9) Floodplain values: As a result of comments from the public and agencies, the USACE conditioned the proposed RGP to state, "The activities authorized by this RGP are not allowed within 100-year floodplains, as documented by Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps." This condition would ensure that the activities authorized by this RGP would have minimal adverse effects on floodplain values.

The FEMA approved 100 year floodplain maps, that are digitized, would be made available to the public and posted on the Mobile District web page for use by the general public. For those maps that are not digitized, the USACE will direct the public to the appropriate FEMA representative/website or the public can review the hardcopy maps located at the District office. USACE personnel would also utilize these maps when reviewing permit applications, to ensure no projects would be authorized within the FEMA designated 100-year floodplain.

A majority of the Turkey Creek watershed that would be excluded from use under the proposed RGP falls within the 100-year floodplain. The Turkey Creek watershed was excluded from the proposed RGP, in part because of flooding concerns.

Therefore, the USACE has determined that this RGP would have no effect on this public interest factor.

(10) Land use: Over the last several decades, coastal Mississippi has experienced large development and, as a result, the environmental landscape has significantly changed. From 1972 to 1992, Mississippi in the three coastal counties (Hancock, Jackson, and Harrison) underwent a number of changes. Developed land acreage increased by 37 percent, and natural land cover decreased by 8 percent. Losses in coniferous forest/savanna and emergent wetlands accounted for most of the natural land cover loss. During the same period, impervious surfaces increased by 36 percent. From 1992 to 2000, developed land increased by 11 percent; concurrently, impervious surfaces increased by 16 percent. Between 1992 and 2000, developed land acreage continued to increase, but it increased only two-thirds as much as the population (by 11 percent compared to 17 percent). High-density urban land in the three coastal Mississippi counties, however, increased twice as much as population did between 1992 and 2000. Impervious surfaces increased about 50 percent more than developed land but less than population.

Activities authorized by this RGP would result in a change in land use from natural to developed. The change in land use would alter the character of the area, usually resulting in the loss of open space. The general public would benefit from the residential housing that would be authorized by this permit. Changes in land use to residential developments would, in most cases, provide economic benefits for the surrounding community. These developments may induce further development on nearby parcels of land. The primary responsibility for land use decisions is held by state, local, and Tribal governments. The local and state governments have indicated an immediate need for housing in the area, as a result of hurricane Katrina.

Although there is indication that residential housing is needed in the area, there is evidence to support that changing undeveloped land into developed land has a negative impact on water quality through the addition of impervious surface. Therefore, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(11) Navigation: This RGP is not authorized in navigable (Section 10) waters.

Therefore, this RGP would have no effect on this public interest factor.

(12) Shore erosion and accretion: This RGP is not authorized in tidal waters or wetlands adjacent to tidal waters.

Therefore, this RGP would have no effect on this public interest factor.

(13) Recreation: Activities authorized by this RGP may change the recreational uses of the area. Certain recreational activities, such as bird watching, hunting, and fishing may no longer be available in the area. The RGP will only allow impacts to low-quality wetlands. Low-quality wetlands typically have very low recreation or aesthetic value as an aquatic resource.

Therefore, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(14) Water supply and conservation: Activities authorized by this RGP may adversely affect both surface water and groundwater supplies. Developments authorized by this RGP would increase demand for potable water in the region. The construction of building pads, foundations, and attendant features such as roads and parking lots would increase the amount of impervious surface in the area, which may decrease replenishment of groundwater supplies. Activities authorized by this RGP can also affect the quality of water supplies by adding pollutants and toxic chemicals to surface waters and groundwater, but many causes of water pollution, such as discharges regulated under Section 402 of the Clean Water Act, are outside the USACE scope of analysis. The quantity and quality of local water supplies may be enhanced through the construction of water treatment facilities. Although the RGP does not specifically prohibit its use in watersheds for public water supplies, it is conditioned with the following: "Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this Regional General Permit. The District Engineer reserves the right to require that any request for authorization under this Regional General Permit be evaluated as a standard permit. In addition, this RGP does not obviate the need for the permittee to obtain other Federal, state, or local authorizations required by law, nor does it grant any property rights or exclusive privileges." If the USACE has evidence, that a particular project may affect water supply and/or conservation, the USACE would elevate that particular project to an IP. Compensatory mitigation would be required for activities authorized by this RGP, which would help improve the quality of surface waters.

The proposed RGP would not impact water supply or conservation any more than if the projects were built on uplands, or IP procedures were used and for that reason the impact caused by issuance of the RGP should be negligible.

Therefore, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(15) Water quality: According to the Final Environmental Impact Statement, Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity For Large-Scale Development in Coastal Mississippi, August 2005, water quality assessments conducted by the MDEQ have determined that failing and substandard individual on-site treatment systems are the primary cause of degraded or polluted water sources in the coastal area of Mississippi. Degraded and polluted coastal waters pose an immediate and cumulative health and environmental hazard to people and aquatic life (GRPC, 2001b). Bacteria leaking into the Mississippi Sound from septic tanks and other sources force the Department of Marine Resources (DMR) to close oyster reefs after each heavy rainfall (Peterson, 1999).

The MDEQ currently monitors, analyzes, and reports on the water quality throughout the state every 4 years. The 1998 report identified 159 segments of water bodies in the state as being impaired. Of the 159 segments, 39 were located in the Mississippi Gulf Coast counties, with 27 of 39 impaired because of the presence of fecal coliform bacteria (pathogens). MDEQ prioritizes the list of impaired water bodies in the order of seriousness of impairment. The Three-County Region contains 8 of the top 11 impaired water bodies in the state.

Between April and September 2001, there were 15 closures of various beaches along the Mississippi Gulf Coast because of high bacteria levels. Of the closures, 14 occurred in Harrison County and one occurred in Jackson County (GRPC, 2001b).

The state of Mississippi has developed the Gulf Region Water and Wastewater Plan (Plan). This is an overall plan to identify water, wastewater, and storm water infrastructure needs in the six Gulf Region counties of Hancock, Harrison, George, Jackson, Pearl River and Stone. As directed by Governor Barbour, the Mississippi Department of Environmental Quality is in charge of developing the Plan. The Plan will identify the region's water, wastewater and storm water needs considering existing and future growth patterns. The infrastructure that is identified from the Plan should provide for long-term growth, recovery, and prosperity in the region. Residential development activities in wetlands and waterbodies may have adverse effects on water quality. These activities can result in increases in nutrients, sediments, and pollutants in the water. The loss of wetland and riparian vegetation would adversely affect water quality because these plants trap sediments, pollutants, and nutrients and transform chemical compounds. Wetland and riparian vegetation also provides habitat for microorganisms that remove nutrients and pollutants from water. Wetlands, through the accumulation of organic matter, act as sinks for some nutrients and other chemical compounds, reducing the amounts of these substances in the water column. Wetlands and riparian areas also decrease the velocity of flood waters, removing suspended sediments from the water column and reducing turbidity.

Riparian vegetation also serves an important role in the water quality of streams by shading the water from the intense heat of the sun. Compensatory mitigation would be required for activities authorized by this RGP, to ensure that the work does not have more than minimal adverse effects on the aquatic environment, including water quality. Wetlands and riparian areas restored, created, enhanced, or preserved as compensatory mitigation may provide local water quality benefits.

During construction of these developments, small amounts of oil and grease from construction equipment may be discharged into the wetlands. Because most of the construction would occur during a relatively short period of time, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on overall water quality.

This RGP requires a Section 401 water quality certification, since it authorizes discharges of dredged or fill material into waters of the United States. Most water quality concerns are addressed by the state or Tribal Section 401 agency.

MDEQ issued water quality certification by letter dated March 28, 2007. The following are the water quality conditions, which will become part of the final RGP:

1. Projects authorized under this General Permit shall connect to an Office of Pollution Control approved wastewater collection and treatment system. **No construction shall begin until all wastewater approvals are obtained.**
2. Post-construction stormwater management features (both structural and non-structural), as appropriate, shall be incorporated into the development plan for activities authorized under this Certification.
3. Appropriate erosion and sediment controls shall be used and maintained in effective operating condition during construction to prevent sediment from entering adjacent waterbodies, including wetlands. Prior to the start of construction activities, projects authorized under this General Permit shall obtain coverage under a Stormwater Construction General NPDES Permit. **No construction on subject projects shall begin until all necessary approvals are obtained from the Department.**
4. All fill material and excavation areas shall have side slopes of at least 3:1 (horizontal:vertical) or flatter and shall be immediately seeded, stabilized and maintained.
5. All piling materials shall be steel, concrete, plastic, or timber treated with chromated copper arsenate (CCA).
6. The turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
7. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

In addition, the following USACE conditions have been added to the RGP: 1) This permit does not authorize stream channelization or relocation, 2) Stream impacts are limited to road crossings with a width not to exceed 30-feet for any single crossing. Each road crossing shall be culverted using bottomless arch culverts, box-culverts or other USACE approved methods. The authorized activities must not increase flooding, or negatively impact the pre-project hydrologic flow characteristics or water quality of any affected stream. For the purpose of this condition, the 30-feet of impacts will be calculated into an acreage figure and included in the 3-acre limit. In addition, a 30-foot vegetated buffer will be maintained between the development and streams, and 3) Sewage will be treated in publicly owned treatment works or in a septic system authorized by the State or County Health Department. There would also be a 7-day coordination period with the MDEQ and EPA so that they may comment on a particular project's impacts to water quality and any significant impacts to 303d listed waterbodies.

With the conditions required by the RGP, the USACE has determined that this RGP would have a negligible effect on this public interest factor. Also, refer to the water quality section under 13.(24).

(16) Energy needs: The developments authorized by this RGP may increase energy consumption in the area, especially electricity, natural gas, and petroleum products. The installation of utility lines to the authorized development is likely to have minimal adverse effects on the aquatic environment.

The proposed RGP would not impact energy needs any more than if the projects were built on uplands, or IP procedures were used and for that reason the impact caused by issuance of the RGP should be negligible.

Therefore, the USACE has determined that this RGP would have a negligible effect on this public interest factor.

(17) Safety: The developments authorized by this RGP would be subject to Federal, state, and local safety laws and regulations.

Therefore, the USACE has determined that this RGP would have a negligible effect on this public interest factor.

(18) Food and fiber production: Activities authorized by this RGP may adversely affect food and fiber production, especially where residential developments are constructed on agricultural land. The construction of building pads and attendant features on farmland reduces the amount of available agricultural land in the nation, unless that land is replaced by converting other land, such as forest, to agricultural land.

Therefore, the USACE has determined that this RGP would have a minor adverse effect on this public interest factor.

(19) Mineral needs: Activities authorized by this RGP may increase demand for aggregates and stone, which are used to construct buildings and roads. Developments authorized by this RGP may increase the demand for other building materials, such as steel, aluminum, and copper, which are made from mineral ores.

The RGP in itself should not induce any additional development to occur in the region and therefore should not result in any additional material demand over what would occur if the RGP was not issued.

Therefore, the USACE has determined that this RGP would have a negligible effect on this public interest factor.

(20) Considerations of property ownership: The RGP complies with 33 CFR 320.4(g), which states that an inherent aspect of property ownership is a right to reasonable private use. The RGP provides expedited DA authorization for discharges of dredged or fill material to construct residential developments, provided the activity complies with the terms and conditions of the RGP and results in minimal adverse effects on the aquatic environment.

Therefore, the USACE has determined that this RGP would have a minor beneficial effect on this public interest factor.

(21) Relative extent of the public and private need for the proposed RGP: This RGP authorizes discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for residential development activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. This RGP satisfies the public and private need for residential facilities, at this time of rebuilding in the area. The need for this RGP is based upon the large number of these activities that occur annually with minimal adverse effects on the aquatic environment. But, most critical to the public and private need for this RGP, would be to allow for the timely recovery of coastal Mississippi after Hurricane Katrina.

Therefore, the USACE has determined that this RGP would have a beneficial effect on this public interest factor.

(22) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the RGP: Most situations in which there are unresolved conflicts concerning resource use arise when environmentally sensitive areas are involved (e.g., special aquatic sites, including wetlands) or where there are competing uses of a resource. The nature and scope of the activity, when planned and constructed in accordance with the terms and conditions of this RGP, reduce the likelihood of such conflict. In the event that there is a conflict, the RGP contains provisions that are capable of resolving the matter, such as, requiring the permittee to avoid and minimize discharges of dredged or fill material into waters of the United States to the maximum extent practicable on the project site, consideration of off-site alternative locations is required for

activities that are authorized by this RGP. General permits authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment and overall public interest. The mitigation requirement would ensure minimal individual and cumulative adverse effects on the aquatic environment. The USACE would exercise discretionary authority and require an Individual Permit if the proposed work would result in more than minimal adverse environmental effects on the project site.

Therefore, the USACE has determined that this RGP would have no effect on this public interest factor.

(23) The extent and permanence of the beneficial and/or detrimental effects which the proposed RGP is likely to have on the public and private uses to which the area is suited: The nature and scope of the work authorized by the RGP would most likely restrict the extent of the beneficial and detrimental effects to the area immediately surrounding the residential development. Activities authorized by this RGP would have minimal adverse effects on the aquatic environment through implementation of compensatory mitigation. A provision of the RGP requires that the discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

As previously stated, the terms, conditions, and provisions of the RGP were developed to ensure that individual and cumulative adverse environmental effects are minimal. Specifically, the RGP does not obviate the need for the permittee to obtain other Federal, state, or local authorizations required by law. The RGP does not grant any property rights or exclusive privileges. Additional conditions, limitations, restrictions, and provisions for discretionary authority, as well as the ability to add activity-specific conditions to this RGP, would provide further safeguards to the aquatic environment and the overall public interest. There are also provisions to allow suspension, modification, or revocation of the RGP.

The beneficial effect, of this RGP, is the accelerated review and issuance of USACE applications/permits due to the immediate need for public housing as a result of hurricane Katrina. The detrimental effects of this RGP, if any, would be minimized by individual permit review, requiring avoidance and minimization of wetland impacts, ability to elevate to IP for any reason, special conditions, and mitigation.

Therefore, the USACE has determined that this RGP would have a negligible effect on this public interest factor.

(24) Cumulative Impacts: In August of 2005, the USACE, Mobile District published the final Environmental Impact Statement (EIS) entitled, "Environmental Impact Statement for Enhanced Evaluation of Cumulative Effects Associated with U.S. Army Corps of Engineers Permitting Activity for Large-Scale Development in Coastal Mississippi." The Coastal MS EIS study area is Harrison County, Hancock County, and western Jackson County, Mississippi. Due to hurricane Katrina, no Record of Decision has been published for the final Coastal MS EIS to date.

In the Coastal MS EIS, the USACE proposed to implement a specially tailored method for reviewing permits (special-purpose methodology), based in part on use of a comprehensive regional trends analysis, that would provide consistent and objective consideration of cumulative effects in environmental impact analyses associated with permit evaluations for future large-scale development projects in coastal Mississippi for which an individual USACE permit is required.

The trends analysis in the Coastal MS EIS relied on four growth scenarios: *low growth* (relative to historical trends), *most-likely growth* (based on average growth [baseline] over the past 30 years), *medium growth* (between baseline and high-growth scenarios), and *high growth* (continuation of recent growth rates since 1992). The trends analysis laid out in the Coastal EIS was not utilized in the decision document for the proposed RGP for four reasons: 1) the EIS studied the cumulative effects of large scale development (the proposed RGP would authorize smaller scale projects), 2) the EIS study area is only a portion of the area that would be covered under the proposed RGP (the geographic boundaries of the proposed RGP would include Hancock, Harrison, Jackson, Stone, Pearl River and George Counties), 3) Hurricane Katrina has impacted growth trends in coastal Mississippi to the point where the data is no longer applicable, and 4) the cumulative impacts assessment, described in this section, more thoroughly addresses the issues specific to the proposed RGP in the current post-Katrina environment.

The Council of Environmental Quality (CEQ) definition of cumulative and secondary impacts found at 40 CFR 1508.7 is: "Cumulative Impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The 404(b)(1) Guidelines at 40 CFR 230.11(g)(2) defines cumulative and secondary impacts: "Cumulative effects attributable to the discharge of dredged or fill material in waters of the United States should be predicted to the extent reasonable and practical. The permitting authority shall collect information and solicit information from other sources about the cumulative impacts on the aquatic ecosystem."

NEPA requires that the impacts of each proposed project be considered within the appropriate geographical area. The geographic area for purposes of consideration of the present proposal are Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi. The USACE determined that actions taken in Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi would be sufficiently similar in location, topography, watershed impacts, habitat types, etc., to be considered in a cumulative impacts assessment. To properly scope this analysis the USACE identified target resources for evaluation based on best professional judgment, public comments and agency comments. Target resources are important resources that could be cumulatively affected by development activities in the identified scoping area. The USACE identified the following target resources because of their scarcity and regional importance: (1) wetlands; (2) water quality; and (3) aquatic species. Below we have assessed

the cumulative impacts of the proposed project on these resources. In doing this, we considered the impacts of this RGP on past projects, as well as all reasonably foreseeable impacts in Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi.

Wetlands

a. Past Projects - Table 7 provides information on all wetland impacts permitted by the USACE, for IPs and NWP's, within Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi by the Mobile District between January 1, 1990, and March 31, 2006, and the acres of wetland mitigation required for these impacts. This information was generated by the Mobile District Regulatory Analysis and Management System (RAMS) database. There has undoubtedly been other wetland losses during this time period from activities not regulated by the USACE, but no data exist on these losses. Also included in this table is information, concerning the total acres of wetlands located in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi.

Table 7. Summary of Wetland Impacts, Required Mitigation
And Total Acres of Wetland Present in Jackson, Harrison, Hancock, Pearl River, Stone, and
George Counties, Mississippi

COUNTY	ACRES OF WETLAND			
	CUMULATIVE IMPACTS	CUMULATIVE MITIGATION	TOTAL WETLANDS	* PERCENT OF TOTAL ACREAGE
Jackson	664.62	2,112.91	223,622	47%
Harrison	983.05	2,590.71	96,294	26%
Hancock	269.12	658.38	84,515	33%
Pearl River	1.80	12.00	22,686	9%
Stone	17.92	39.00	37,374	13%
George	22.87	26.30	14,190	5%
TOTAL	1,959.38	5,439.30	478,681	

* Total percentage equals the amount of land in county that is wetlands.

In summary, there are approximately 478,681 acres of wetlands in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi. By deducting 1,959.38 acres of wetland impacts since 1990 (RAMS database), there are at least 476,721.62 acres of wetlands remaining in this area. This amounts to a loss of 0.004 percent of the wetlands in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi since 1990. The USACE can also document that 5,439.30 acres of wetland mitigation were provided to offset the post 1990 impacts in this area.

b. Reasonably Foreseeable Impacts - Cumulative impacts of IP's, on wetlands, would depend on the amount of wetland impacts authorized by each IP. Based upon past use, IP's authorized approximately 1,959.38 acres over a 195 month period. Therefore, we expect that approximately 240 acres of wetland impacts could occur over a two-year period (1,959.38 wetland acres/195 months = 10 acres per month, which equals 240 acres over a 2-year period). This equates to 0.0005 percent of the total wetlands for the lower six counties.

Cumulative impacts of the RGP, on wetlands, would depend on the number of times the permit is issued. Based upon past use of the NWP-26 (373 times between 1996 and 2000) and IP's authorizing impacts to 3 acres or less (19 times between 2000 and 2006), we expect that approximately 75 applications per year could be submitted, with approximately 15 per year actually qualifying to meet the requirements of the RGP (based on our approximation that 20% of the wetlands in the area are low-quality). The RGP may be used to authorize approximately 30 permits equaling a maximum of 90 acres of low-quality wetland fill over the two years of its proposed initial use. This 90 acres of impact equates to 0.018% of the total wetlands for the lower six counties. The demand for these types of activities could increase or decrease over the initial two year duration of the RGP. Using the above trend, approximately 75 activities equaling a maximum of 225 acres of low-quality wetland fill could be authorized over the maximum 5 year period. We expect that the time savings associated with the use of the RGP would encourage applicants to design their project within the scope of the permit rather than request an Individual Permit, which could result in greater impacts.

Even when considered cumulatively with the above discussed impacts, the 90 acres of potential impacts to wetlands and other waters of the United States associated with this RGP, would have only negligible impact to wetland resources in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi. In addition, this impact would be offset by the mitigation requirements of the proposed RGP.

Therefore, the RGP, with its revised mitigation, would result in a negligible impact to wetlands in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi when considered alone or in concert with the other past, present and reasonably foreseeable future projects in those six counties.

Water Quality

a. Past Projects - Water quality is affected by changes to the environment (referred to as stressors) that adversely affect aquatic life or impair human uses of a water body. Point-sources are municipal, agricultural and industrial wastewater discharge. Non-point sources consist of sediment, litter, bacteria, pesticides, fertilizers, metals, oils, grease, and a variety of other pollutants that are washed from rural and urban lands by storm water. Expected growth in population and employment in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi will mean more potential stress from storm water runoff as well as non-point source loading.

Point Source Discharges: Impacts to water quality from municipal wastewater, agricultural, and industrial discharges were greater prior to the 1970's. Due to increased regulation, these discharges have been reduced but continue to introduce pollutants into the system, which lower water quality when considered cumulatively. Mississippi's 303(d) List for Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi is comprised of three basins (Coastal Streams Basin, Pascagoula River Basin, and Pearl River Basin) and has 30 waterways listed as impaired or partially impaired, for pathogens, organic enrichment/low dissolved oxygen, biological impairment, nutrients, and total toxics. The proposed RGP would have a minor contribution to water quality impacts in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi.

Non-point Source Discharges: Residential developments result in an increase in impervious surfaces (roof tops, paved roads, parking lots, etc.), which affects storm water discharges. Development results in an increase in non-point source contaminant loading through associated increases in urban landscaping (pesticides and fertilizers), increased traffic (oil, grease and metals), and other associated activities. There would be an anticipated incremental increase in adverse impacts to water quality as impervious surfaces increase.

The impervious surface data was generated by the US Environmental Protection Agency and provided to the USACE via a table titled "Total Impervious Area Calculations by 12-Digit Hydrologic Unit Code Watershed (based upon National Land Cover Data, 1993). Using simple linear regression analysis, the USACE utilized county population projection data to estimate percent increase in impervious surface, by county. The data contained in Table 8 indicates that as the population of each county continues to increase, there will be an associated increase in impervious surfaces. Using the linear regression analysis for impervious surface coverage, Harrison County would be anticipated to experience the greatest percent increase (~ 13%) in percent impervious surface from 2005 to 2020. However, this equates to an approximately 1% increase in percent impervious surface within Harrison County. The subject project would result in very little impervious surface in the remaining watersheds and would contribute minimally to the incremental increase in impervious surface and the associated adverse impact to water quality. Each county is responsible for regulating non-point source storm water discharges pursuant to Section 402 of the Clean Water Act. These county storm water management programs should help to minimize any anticipated adverse impacts to water quality associated with impervious surfaces.

Table 8

County		YR 2000	YR 2005	YR 2010	YR 2015	YR 2020
Jackson						
	Population	131,420	135,571	141,286	146,978	152,670
	% Impervious Surface	5.87	6.02	6.23	6.43	6.64
Harrison						
	Population	189,601	193,187	203,989	213,124	222,259
	% Impervious Surface	7.97	8.10	8.48	8.81	9.14
Hancock						
	Population	42,967	46,546	50,312	54,647	58,981
	% Impervious Surface	2.69	2.82	2.95	3.11	3.26
Pearl River						
	Population	48,621	52,458	58,988	64,216	69,443
	% Impervious Surface	2.89	3.03	3.26	3.45	3.64
Stone						
	Population	13,622	14,883	16,513	17,957	19,400
	% Impervious Surface	1.63	1.68	1.74	1.79	1.84
George						
	Population	19,144	21,171	22,640	24,256	25,871
	% Impervious Surface	1.83	1.90	1.96	2.01	2.07

b. Reasonably Forseeable Impacts - During development throughout the life of the RGP, various amounts of oil and grease from construction equipment may be discharged into the wetlands. Because most project specific construction would occur during a relatively short period of time, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on overall water quality.

This RGP requires a Section 401 water quality certification, since it authorizes discharges of dredged or fill material into waters of the United States. Most water quality concerns are addressed by the state or Tribal Section 401 agency. MDEQ issued water quality certification by letter dated March 28, 2007, and all applicants must comply with the conditions of the water quality certificate.

In view of the above, the USACE determined that the proposed project, with proposed special permit conditions, would have a negligible impact on water quality when considered alone or in concert with the other past, present and reasonably foreseeable future projects in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi.

Aquatic Species

a. Past Projects - The proposed RGP would have no direct impact on aquatic species. Rather, the project would result in an unavoidable loss of approximately 90 acres of wetlands located in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi, and a loss of aquatic function provided by these wetlands. The RGP-related wetland loss would be minor when considered cumulatively with all other past wetland losses discussed above.

b. Reasonably Forseeable Impacts - Notification and coordination is required for all discharges associated with this RGP, which provides the District Engineer and the applicable State and Federal agencies with an opportunity to review the proposed work and assess potential impacts on fish and wildlife values and ensure that the authorized activity results in minimal adverse effects on the aquatic environment. In addition, this RGP prohibits the channelization or relocation of stream beds. Compensatory mitigation, using the WRAP assessment, would be required by the USACE to restore, enhance, create, and/or preserve wetlands and other aquatic habitats, at mitigation banks, to offset losses of waters of the United States. WRAP takes into account wildlife values the USACE will require for the mitigation to offset the loss of functions and values. Vegetated buffers next to open and flowing waters may also be required as compensatory mitigation. These methods of compensatory mitigation would provide fish and wildlife habitat values.

In addition, the RGP states, "No authorization shall be granted for any project that may affect any threatened or endangered species and/or their critical habitats. Permit submittal must include a Federally-listed threatened and endangered animal and plant species survey. If Federally-listed animal and/or plant species are found on the site, no activities will be authorized until the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service have completed consultation on the project. No activity shall be authorized which: 1) may affect: any other Federally-listed threatened or endangered species; or 2) may destroy or adversely modify: designated critical habitat for any Federally-listed threatened or endangered species." Also, a special condition of the RGP requires the applicant provide, "A Federally-listed threatened and endangered animal and plant species survey."

The following table represents near term projects that could potentially be impacted by the

proposed RGP. These near term projects will be conducted as part of the MsCIP:

Table 9

PROJECT	PROJECT PURPOSE	COUNTY
Bayou Caddy	Ecosystem Restoration	Hancock
Hancock County Beaches	Hurricane & Storm Damage Reduction	Hancock
Hancock County Streams	Flood Damage Reduction & Ecosystem Restoration	Hancock
Jackson Marsh	Ecosystem Restoration	Hancock
Clermont Harbor	Hurricane & Storm Damage Reduction	Hancock
Downtown Bay St. Louis	Hurricane & Storm Damage Reduction	Hancock
Cowand Point	Hurricane & Storm Damage Reduction	Hancock
Long Beach Canals	Flood Damage Reduction	Harrison
Harrison County Beaches	Hurricane & Storm Damage Reduction & Ecosystem Restoration	Harrison
Courthouse Road	Flood Damage Reduction & Ecosystem Restoration	Harrison
Shearwater Bridge	Hurricane & Storm Damage Reduction	Jackson
Gautier Coastal Streams	Flood Damage Reduction & Ecosystem Restoration	Jackson
Pascagoula Beach Boulevard	Hurricane & Storm Damage Reduction & Ecosystem Restoration	Jackson
Upper Bayou Casotte	Flood Damage Reduction	Jackson
Franklin Creek Floodway	Flood Damage Reduction	Jackson

These projects will occur in three of the six counties where the RGP would be utilized. The USACE has conditioned the permit to exclude this RGP from “within or abutting projects that are currently being formulated as part of the Mississippi Coastal Improvements Program comprehensive plan for hurricane storm damage reduction and environmental restoration. The MsCIP will identify those areas within the 3 southern coastal counties (Jackson, Harrison, Hancock) which are considered priority for possible evacuation of structures with subsequent environmental restoration and with coordination.” Each application for use of the RGP will be coordinated with the USACE, Planning Division.

In view of the above, the USACE determined that the proposed project, with proposed special permit conditions, would have a negligible impact on aquatic species when considered alone or in concert with the other past, present and reasonably foreseeable future projects in Jackson, Harrison, Hancock, Pearl River, Stone, and George Counties, Mississippi.

(25) Secondary Impacts: Secondary impacts generally associated with fill activities in wetlands include changes in water circulation and flow patterns, changes in stormwater runoff volumes and quality, release of leachate from septic tanks, and reduction in habitat size and/or connectivity for species that are dependent on or use the aquatic environment. Under the proposed RGP secondary effects would be reduced from those that could be expected to occur under normal permitting procedures, and such secondary effects that would occur would be minimal.

The proposed RGP would prescribe compensatory mitigation to replace functional loss of waters of the United States. The applicant would have to submit a Wetland Rapid Assessment Procedure (WRAP) analysis to determine the level of functions to be replaced. Only wetlands determined to be low quality through the use of a WRAP analysis would be impacted by this proposed RGP. The USACE would review the WRAP analysis and make the final determination on what constitutes a low quality wetland. A more thorough explanation of WRAP can be found below in Section 16 (a)(5).

Therefore, the USACE has determined that with the conditions required by the proposed RGP, secondary impacts would be negligible.

14. Public Interest Determination: This RGP has been determined not to be contrary to the public interest, as demonstrated above; therefore, its issuance is warranted provided the following conditions are adhered to:

a. The work herein authorized includes activities required for the construction or expansion of residential building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures within the Mobile District, Regulatory Division's Geographic Boundary of Hancock, Harrison, Jackson, Pearl River, Stone, and George Counties, Mississippi. Attendant features include but are not limited to roads, parking lots, garages, yards, utility lines and stormwater management facilities. NOTE: Stormwater management facilities may require separate state and federal permitting. Attendant features do not include ponds, golf courses, fitness facilities, playgrounds, playing fields, etc. Examples of residential developments include multiple and single unit developments.

b. The cumulative total area of permanently impacted waters of the United States associated with a single and complete project shall not exceed three acres under a single stand-alone project for the entire tract of land (i.e. no piece-mealing is authorized by this RGP). For new residential developments, the total loss of waters of the United States authorized shall not exceed three acres. For expansion of residential developments, the originally filled areas (those areas that previously impacted wetlands) and proposed fill areas, combined, shall not exceed three acres.

c. No work shall be performed until the applicant receives written authorization from the District Engineer.

d. No work is authorized in tidal waters. The term "tidal waters" means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

e. No work is authorized in non-tidal waters that are adjacent to tidal waters. The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes and the like are adjacent wetlands.

f. No speculative filling is authorized. If no residential structures (i.e houses or apartments) are constructed, prior to the expiration date of this RGP SAM-20 (or within 12 months of expiration date, if work has commenced or is under contract to commence), the applicant/owner shall remove all fill material associated with the authorized activity. The removal of the fill material will be at the applicants/owners expense.

g. Recreational and/or aesthetic impoundments are not authorized.

h. RGP SAM-20 shall only be used for impacts to low quality wetlands, based on a USACE approved WRAP assessment. Low quality wetlands are defined by a score of 0.5 or less on a WRAP assessment.

i. No work is authorized in the following areas:

1. Historical Preserves or parcels/tracts abutting these lands;
2. National Estuarine Research Reserves or parcels/tracts abutting these lands;
3. National Wildlife Refuges or parcels/tracts abutting these lands;
4. Coastal Preserves or parcels/tracts abutting these lands;
5. Conservation Lands, Conservation Easements, Conservation Trusts, USACE required mitigation areas or parcels/tracts abutting these lands;
6. Pascagoula River Wildlife Management Area or parcels/tracts abutting these lands;
7. Important Bird Areas (IBA), as defined by the National Audubon Society, or parcels/tracts abutting these lands;
8. Within or abutting projects that are currently being formulated as part of the Mississippi Coastal Improvements Program comprehensive plan for hurricane storm damage reduction and environmental restoration. The MsCIP will identify those areas within the 3 southern coastal

counties (Jackson, Harrison, Hancock) which are considered priority for possible evacuation of structures with subsequent environmental restoration;

9. Within the Turkey Creek watershed;

10. Within 100-year floodplains, as documented by Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps.

j. No registered properties or properties listed as eligible for inclusion in the National Register of Historic Places shall be affected. Permit submittal must include either a Phase I survey or a letter from the State Historic Preservation Officer, for Mississippi, confirming that no impacts to known cultural/historical resources will occur on the project site.

k. Should artifacts or archaeological features be encountered during project activities, work shall cease and the Mississippi State Historic Preservation Officer and the U.S. Army Corps of Engineers, Mobile District, Regulatory Division shall be consulted immediately. The USACE would 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.

l. In the event any items falling under Native American Graves and Repatriation Act (NAGPRA) are discovered during construction, the appropriate persons, including state and tribal NAGPRA representatives would be notified immediately for further consultation.

m. This permit does not authorize stream channelization or relocation.

n. Stream impacts are limited to road crossings with a width not to exceed 30-feet for any single crossing. Each road crossing shall be culverted using bottomless arch culverts, box-culverts or other USACE approved methods. The authorized activities must not increase flooding, cause downstream bank erosion, increase peak discharge, or negatively impact the pre-project hydrologic flow characteristics or water quality of any affected stream. For the purpose of this condition, the 30-feet of impacts would be calculated into an acreage figure and included in the 3-acre limit. In addition, a 30-foot vegetated buffer would be maintained between the development and streams.

o. Sewage will be treated in publicly owned treatment works or in a septic system authorized by the State or County Health Department.

p. No activity, authorized by this permit, shall increase flooding onto adjacent properties.

q. No authorization shall be granted for any project that may affect any threatened or endangered species and/or their critical habitats. Permit submittal must include a Federally-listed threatened and endangered animal and plant species survey. If Federally-listed animal and/or plant species are found on the site, no activities will be authorized until the U.S. Army

Corps of Engineers and U.S. Fish and Wildlife Service have completed consultation for the proposal, under Section 7 of the Endangered Species Act. No activity shall be authorized which:

- 1) may affect: any other Federally listed threatened or endangered species; or
- 2) may destroy or adversely modify: designated critical habitat for any Federally listed threatened or endangered species.

r. Compensatory mitigation, for unavoidable impacts to waters of the United States, will be required through the purchase of in-kind credits at a USACE-approved mitigation bank. The applicant is required to use the particular bank's ratio in determining the amount of credits to be purchased. The applicant is required to purchase credits from mitigation banks whose service area includes the project area (i.e. same watershed as impacts). If a project does not fall within any mitigation bank's service area, the applicant shall then purchase in-kind mitigation bank credits from the next closest USACE-approved mitigation bank to the project site. If stream mitigation credits are not available from a mitigation bank, the applicant is required to provide appropriate mitigation and will use the most current approved stream functional assessment method. Proof of mitigation credit purchase shall be provided to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001, after receiving USACE authorization and prior to the start of any authorized work.

s. The applicant must allow representatives, from the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, 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 this permit.

t. Prior to construction, the limits of the proposed fill areas shall be clearly flagged and staked by the agent and/or contractor. All construction personnel shall be shown the location(s) of all wetland areas outside of the construction area to prevent encroachment from heavy equipment into those areas. In addition, all filled areas shall be completely contained through installation of toed-in silt fencing and staked hay bales and maintained until work has been completed.

u. Any temporary impacts shall be restored to pre-project conditions within 30 days of completion of work associated with this permit.

v. All persons/contractors involved in this permitted activity shall be provided copies of the permit in its entirety. A copy shall remain on site at all times during construction.

w. Fill material used with this project shall be limited to suitable, clean fill material, which excludes material such as trash, debris, car bodies, asphalt, construction materials, concrete block with exposed reinforcement bars, and any soils contaminated with any toxic substance in toxic amounts (see Section 307 of the Clean Water Act).

x. All slopes shall be stabilized with sod, degradable mats and/or seed and mulch. Erosion controls in the form of toed-in silt fencing and staked hay bales will be installed and maintained until the vegetative cover is established.

y. The permittee shall notify the U.S. Army Corps of Engineers, upon commencement and completion of work authorized by the permit. Such notification must be provided within 5 days of initiation and completion of the authorized work. The notification shall be submitted to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001.

z. Within 60 days of completion of the authorized work, the permit's Self-Certification Statement of Compliance must be completed and submitted to the U.S. Army Corps of Engineers. Mail the completed form to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001.

aa. If you sell the property associated with this permit, you must complete and submit the Department of the Army Permit Transfer Request. Mail the completed form to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001.

bb. Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this regional general permit. The District Engineer reserves the right to require that any request for authorization under this regional general permit be evaluated as a standard permit. In addition, this RGP does not obviate the need for the permittee to obtain other Federal, state, or local authorizations required by law, nor does it grant any property rights or exclusive privileges.

cc. Permit applications shall be submitted to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Coastal Mississippi Branch, Post Office Box 2288, Mobile, Alabama 36628-0001, using the Mississippi Joint Application form and must include the following:

- A delineation of wetlands and/or other waters of the U.S. The onsite wetlands/waters of the U.S. must be flagged and easily accessible.
- Data sheets, as outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Miss., 1987 (87 Manual).
- 8-1/2" X 11" plan-view drawings of existing and proposed site conditions.
- 8-1/2" X 11" cross-sectional drawings for road crossings. Road crossings must use bottomless arch culverts, box culverts, or other USACE approved methods and the drawing must include elevation and dimensions.

- Topographic map; indicating project boundary and Latitude/Longitude in degrees, minutes, and seconds.
- Soil survey.
- An aerial photo or ground-level pictures of the site, depicting current conditions.
- Location map.
- Mitigation calculations/bank name.
- WRAP assessment.
- 100-year floodplain documentation through Federal Emergency Management Administration's (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps.
- Documentation that work is not within or on parcels/tracts abutting areas identified in Special Condition h. above.
- Statement as to how project relates to redevelopment due to Hurricane Katrina.
- Demonstration that the project will not increase flooding onto adjacent properties.
- A statement that sewage will be treated in publicly owned treatment works or in a septic system authorized by the State or County Health Department.
- A clearance letter from SHPO or Phase I survey.
- A Federally-listed threatened and endangered animal and plant species survey.
- A written statement explaining how avoidance and minimization for losses of waters of the United States were achieved on the project site.
- Demonstration that the activity will not increase flooding, cause downstream bank erosion, increase peak discharge, or negatively impact the pre-project hydrologic flow characteristics or water quality of any affected stream.

15. Consideration of Special Acts or Executive Orders (EO) Not Already Addressed

a. Environment

1. Section 176(c) of the Clean Air Act General Conformity Rule Review: The project area is within a National Ambient Air Quality Standards attainment area and therefore does not require a conformity analysis pursuant to Section 176(c) of the Clean Air Act.

2. EO 11900 - Protection of Wetlands (1977): The purpose of this Executive Order is to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of the wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. The evaluation of the proposed project, taking into account economic, environmental and other pertinent factors, indicate that (1) there is no practicable alternative to the proposed project, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

3. EO 13158 - Marine Protected Areas (2000): The purpose of this Executive Order is to help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation's natural and cultural marine heritage and ecologically and economically sustainable use of the marine environment for future generations. This action will not effect any marine protected areas.

b. Other

1. EO 13175 - Consultation and Coordination with the Tribal Indian Governments: The purpose of this Executive Order is to coordinate new construction with Indian Tribal Governments. This proposed work has been coordinated with Tribal Officials. The consultation indicates that no documentation directly linking Indian Religious Sites to the proposed activity. In the event any items falling under Native American Graves and Repatriation Act (NAGPRA) are discovered during construction, the appropriate persons, including state and tribal NAGPRA representatives will be notified immediately for further consultation.

2. EO 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations: The purposes of the EO are as follows:

- To focus the attention of federal agencies on human health and environmental conditions in minority communities and low-income communities with the goal of achieving environmental justice.

- To foster nondiscrimination in federal programs that substantially affect human health or the environment.
- To give minority communities and low-income communities greater opportunities for public participation in, and access to, public information on matters relating to human health and the environment.

As stated in the Council on Environmental Quality publication entitled, “Environmental Justice, Guidance Under the National Environmental Policy Act,” dated December 10, 1997: Environmental justice concerns encompass a broad range of impacts covered by the National Environmental Policy Act (NEPA), including impacts on the natural or physical environment and interrelated social, cultural and economic effects. In preparing an EIS or an EA, agencies must consider both impacts on the natural and physical environment, such as human health or ecological impacts on minority populations, low-income populations, and Indian tribes, or from related social or economic impacts. Agencies should recognize that the question of whether agency action raises environmental justice issues is highly sensitive to the history or circumstances of a particular community or population, the particular type of environmental or human health impact, and the nature of the proposed action itself. There is not a standard formula for how environmental justice issues should be identified or addressed.

In the absence of a standard formula, the USACE consulted widely available information and comments received during the public notice process to determine the impact of the proposed RGP on the ecology of the lower six counties in Mississippi and the impact to minority populations, low-income populations, and Indian tribes. As discussed in the Public Interest Review section of this document, related social and economic impacts were also addressed in more detail. The Coastal Mississippi EIS at Section 5.1.3 contains information related to Environmental Justice for Jackson, Hancock, and Harrison Counties. The following table contains information from the EIS which was supplemented with information from the U.S. Census Bureau which is available on the internet.

Table 10

PERCENTAGE OF MINORITY AND LOW INCOME POPULATIONS PER COUNTY

COUNTY	PERCENT MINORITY	PERCENT LIVING IN POVERTY
HANCOCK	9.7	15.3
HARRISON	26.9	14.9
JACKSON	24.6	13.6
PEARL RIVER	15.7	18.1
GEORGE	12.8	16.1
STONE	22.5	17.3

The average percentage of people living below the poverty line is 18.3 percent for the entire State of Mississippi. The Counties described in Table 10 are all below the state average for

persons living in poverty. Pearl River, George, and Stone Counties are the closest to the state average. Approximately 40 percent of the population of the State of Mississippi is a member of a minority group, with 36.9 percent described by the U.S. Census Bureau as black persons. All of the counties listed in Table 10 are below the state average of 40 percent minority; Harrison and Jackson Counties are closest to the state average. According to Table 5.1-1 in the Coastal Mississippi EIS, there are communities within Jackson, Harrison, and Hancock Counties with a minority population greater than the county average. These areas include the lower third of Hancock County, areas in and around Gulfport, areas in and around Biloxi, and the southeast corner of Jackson County.

One community with a minority population greater than the county average is within the Turkey Creek watershed. The Turkey Creek Community Initiatives (TCCI) Action plan dated 6 February 2006 describes the history of the area as follows: In 1866, a small group of recently emancipated African-Americans exercised their newly acquired rights of citizenship, property-ownership and self-determination to purchase and settle the 320 acres or "eight forties" that came to be known as the Turkey Creek community. The land they acquired comprised the entire northern half of section 22, named for both a brackish stream flowing northeast towards Bayou Bernard and an abundance of wild turkeys in the area. The Turkey Creek community found itself nestled in one of North America's most diversified national habitats. Turkey Creek and the surrounding communities were quickly transformed into vibrant, self-sufficient African-American neighborhoods, replete with farms, homesteads and the first African-American school in the Gulfport region.

One of the primary strategies of the TCCI under environmental conservation is to "Explore the creation of wetland protection zones, environmental clean-up opportunity and a comprehensive watershed management plan." To give minority communities and low-income communities greater opportunities for public participation in, and access to, public information on matters relating to human health and the environment, the USACE believes that impacts within the Turkey Creek watershed would be better addressed through the individual permit process. The individual permit process has a 21 day public notice comment period that would allow the TCCI, and other interested parties, the opportunity to provide comments concerning their plans for "wetland protection zones" and to express other concerns. The Turkey Creek watershed was also excluded from the RGP because of flooding concerns as mentioned in Section 13(a)(10) of this document.

Hurricanes and recovery efforts are different for low income populations. The challenges the entire community faces after a hurricane are even tougher for those with economic challenges. They live in structures that are likely weaker, and thus suffer more damage. They don't have the economic cushion to sustain them through a crisis, or to rebuild their communities. The RGP will benefit the entire Mississippi coastal community in that its aim is to expedite recovery and rebuilding of residential developments and through providing employment that supports the construction efforts.

16. Evaluation of the 404(b)(1) Guidelines

a. Factual Determination (40 CFR Section 230.11): A review of appropriate information indicates there is minimal potential for short or long-term environmental effects of the proposed discharge as related to:

1. Physical substrate: The discharge of dredged or fill material into wetlands/streams may result in the destruction of riparian vegetation. Some vegetation may have to be removed prior to construction while other vegetation may be crushed as a result of various construction activities or smothered by the placement of fill material. Overhanging riparian vegetation provides shelter, shade, breeding and rearing areas for various fish and other aquatic organisms as well as terrestrial wildlife such as birds and small mammals. It also serves an important role in water quality by shading the water from the intense heat of the sun. Emergent vegetation also provides habitat and food for a wide variety of terrestrial and aquatic organisms. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands, and a proposal of appropriate and practicable measures to mitigate the loss of special aquatic sites, including wetlands.

Discharges of dredged or fill material into waters of the United States would alter the substrate of those waters, usually replacing the aquatic area with dry land, and changing the physical, chemical, and biological characteristics of the substrate. The original substrate would be removed or covered by other material, such as concrete, asphalt, soil, gravel, etc. Temporary fills may be placed upon the substrate, but must be removed upon completion of the work. Higher rates of erosion may result during construction, but the RGP requires the use of appropriate measures to control soil erosion and sedimentation.

During the discharge of dredged or fill material fish and other motile aquatic organisms are most likely to avoid the construction area. Benthic, immotile or slow moving organisms in the path of equipment and building materials would be destroyed. Some organisms would be smothered by the placement of fill material or when suspended material settles to the bottom. Limiting the area that may be impacted is expected to minimize the adverse impacts of the activity.

Depending on the construction method used, composition of the bottom, and wind and current conditions during construction, fill material placed in the water and suspended in the water column would temporarily increase the turbidity of the water. The plume generated would normally be limited to the immediate vicinity of the disturbance and should dissipate shortly after each phase of the construction activity.

During construction small amounts of oil and grease may be discharged into the watercourse from construction equipment. Because the construction, in most cases, is short term, the frequency and concentration of these discharges are not expected to have more than minimal adverse impacts on overall water quality.

To further minimize adverse impacts of the authorized activity, the RGP is conditioned to ensure that any intermediate impacts are minimized.

2. Water circulation, fluctuation, and salinity: It is not expected that the placement of fill or excavation of wetlands for projects that would be authorized under this RGP would either individually or cumulatively, directly effect the circulation, fluctuation and salinity of the various receiving waterbodies of the watersheds in which the RGP is proposed. Indirect effects on these receiving waterbodies by RGP authorized activities are expected to be of a scale that would not measurably alter their ecological balance due to the size of the receiving waters and to the water quality protection measures required by the State. In addition, the RGP does not authorize any activities in any navigable or tidal waters, or wetlands adjacent to tidal waters. Authorized projects may impact interior open waters, such as streams and ponds, within the RGP area itself. All road crossings in wetlands/streams shall be designed so that the hydrologic conveyance is not reduced or impaired and no wetland fill shall sever a jurisdictional connection or isolate a jurisdictional area. It is anticipated that most direct wetland impacts would occur along the perimeters of large wetlands in low quality wetlands, since such wetlands in the RGP area consist of high quality wetland cores with perimeter low quality wetlands that have been impacted by past silvicultural activities. Overall, the potential alteration of flow patterns over the landscape of the RGP area and its constituent individual sub-basins would be minimal.

3. Suspended particulate/turbidity: It is not expected that projects authorized by the RPG would significantly release suspended particulate matter into or affect turbidity of receiving waters or wetlands, streams or other waters adjacent to permitted impact areas. As a special condition of this RPG, permittees would be required prior to and during construction, to implement and maintain erosion and sediment control best management practices needed to retain sediment on-site and to prevent violations of state water quality standards, including turbidity standards. Depending on the method of construction, soil erosion and sediment control measures, equipment, composition of the bottom substrate, and wind and current conditions during construction, fill material placed in open waters would temporarily increase water turbidity. Notification is required for all discharges, which would allow the District Engineer to review each activity and ensure that adverse effects on the aquatic environment are minimal. Particulates would be re-suspended in the water column during removal of temporary fills. The turbidity plume would normally be limited to the immediate vicinity of the disturbance and should dissipate shortly after each phase of the construction activity.

4. Contaminant availability: The source of fill material that would be used for individual projects is unknown, but the RGP would require the use of clean fill material. Surface water management systems for all projects authorized by this RGP would be required to be designed, constructed, operated and maintained in compliance with the State Stormwater standards.

5. Aquatic ecosystem effects: Under the proposed RGP, only low quality wetlands would be directly impacted. The quality of wetlands would be determined using the Wetland Rapid Assessment Procedure (WRAP), which was developed by the South Florida Water Management District and various Federal agencies. The applicant would complete the WRAP analysis and

submit it to the USACE for review. The USACE would then make the final determination of the wetland quality. Using WRAP, a project site would be mapped according to habitat type and assigned functional credit values based on the ecosystem function they provide relative to a “fully-functional” wetland system of similar type. The functional credits for the site would then be summed for the pre-development condition. In general, the score for low quality wetlands using WRAP is 0.5 or below. Medium quality wetlands would score from 0.5 to 0.75 and high quality wetlands would score from 0.75 to 1. WRAP can also be used to assess the post development condition of a project site based on an on-site mitigation plan, but the proposed RGP would only allow the purchase of credits at a USACE approved wetland mitigation bank. Therefore, there is no need for a post development WRAP analysis.

There are currently 6 mitigation banks that service Jackson, Harrison, Hancock, Stone, George and Pearl River counties. These mitigation banks are as follows: Crane Creek Mitigation Bank, Dead Tiger Mitigation Bank, Mississippi Wetlands Bank, South Mississippi Mitigation Bank, TNC – Old Fort Bayou, and Wetland Solutions George County Mitigation Bank. The mitigation banks consist of approximately 1,003.80 total credits that are currently available for purchase. These credits are more than sufficient to compensate for any losses associated with this RGP. The data is based upon ledgers provided January 15, 2007. There are a total of 10,939 credits generated at these banks, of which 3,282 have yet to be released and would be available in the future. The proposed RGP would only require 45 credits of the 10,939 credits currently available, assuming the highest possible low quality wetland WRAP score of 0.5 multiplied by 90 acres estimated to be impacted by the RGP. See Section 13(a)(24) for an explanation of the 90 acre estimate. Mitigation, within these established banks will result in no net loss of wetland functions within the study area.

Within the footprint of the area of wetlands that would be directly impacted, wetland plants and organisms, and the habitats, which support them, would be eliminated. Secondary impacts on remaining wetlands adjacent to areas impacted by projects authorized by the RGP would include decreased wildlife usage and changes in hydrology due to the damming effect of fills. However, the proposed RGP would minimize such impacts over what could be expected to occur under normal permitting procedures, since the majority of our IP's (approximately 90%) are over 3-acres of wetland impacts. This RGP would have the same affect as a NWP authorization, as it would encourage applicants to reduce impacts to meet the threshold of the permit. In addition to minimizing wetland impacts, the proposed RGP would include establishment of buffers adjacent to streams.

6. Proposed disposal site: The fill material would be contained at the site of placement. Therefore, an analysis of mixing zones is not applicable.

b. Restrictions on discharges

1. Alternatives (See Number 12 above)

- a. The activities authorized by the RGP are located in a special aquatic site (wetlands/streams).
- b. The activities authorized by the RGP do not need to be located in a special aquatic site to fulfill the basic project purpose.
- c. All practicable alternatives have been reviewed in Section 12 above. It has been demonstrated that the alternative with the fewest impacts on the aquatic ecosystem (least damaging alternative), has been identified.
- d. The least damaging alternative has no other significant environmental effects.

2. Other program requirements

- a. The proposed RGP will not violate applicable State water quality standards or Section 307 prohibitions or effluent standards.
- b. The proposed RGP will not jeopardize the continued existence of federally listed threatened or endangered species or affect their critical habitat.
- c. The proposed RGP will not violate the requirements of a federally designated marine sanctuary.

3. The RGP will not cause or contribute to significant degradation of waters of the United States, including adverse effects on human health; life stages of aquatic organisms; ecosystem diversity, productivity and stability; and recreational, aesthetic, and economic values.

4. Minimization of adverse effects

- a. Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem.
- b. Compensatory Mitigation (Wetland restoration, enhancement, creation, preservation, etc.): Under existing law, the USACE requires compensatory mitigation to replace lost aquatic resource functions unavoidably lost or adversely affected by authorized activities. Regulatory Guidance Letter (RGL) 02-2 clarifies and supports the national policy of “no overall net loss” of wetlands and reinforces the USACE commitment to protect waters of the United States, including wetlands. For wetlands the objective is to provide, at a minimum, one-to-one functional replacement, i.e. no net loss of functions. RGL 02-2 also states that Districts should determine functional scores using aquatic site assessment techniques generally accepted by experts in the field of best professional judgment of Federal, tribal, and state agency representatives, fully considering ecological functions in the 404(b)(1) Guidelines. In a public notice dated 22 September 2006, the Mobile District published local compensatory mitigation guidelines that also endorsed the use of functional assessment methods. Based on both national

and local guidance, just mentioned above, the decision was made to utilize WRAP as a functional assessment tool as part of this proposed RGP. WRAP is generally accepted by experts in the field, is currently utilized by the Mobile District, and is also used successfully in other USACE Districts.

Under this proposed RGP a WRAP analysis would be conducted for unavoidable impacts. The analysis would then be submitted to the USACE for review. Once the USACE agrees with the functional assessment, any lost functions would be adequately compensated through mitigation. Compensatory mitigation, for unavoidable impacts to waters of the United States, would be required through the purchase of credits at a USACE-approved mitigation bank. Once the USACE has determined that the impacts would be to low quality wetlands, the applicant is required to use the particular bank's ratio in determining the amount of credits to be purchased. The applicant is required to purchase credits from mitigation banks whose service area includes the project area (i.e. same watershed as impacts). If a project does not fall within any mitigation bank's service area, the applicant shall then purchase in-kind mitigation bank credits from another USACE-approved mitigation bank. If stream mitigation credits are not available from a mitigation bank, the applicant is required to provide appropriate mitigation and would use the most current approved stream functional assessment method. Proof of credit purchase shall be provided in writing to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division prior to beginning work authorized by the RGP.

17. Findings of 404(b)(1) Analysis

The proposed RGP complies with the Section 404(b)(1) guidelines with incorporation of the following conditions:

a. You must allow representatives, from the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, 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 this RGP.

b. Prior to construction, the limits of the proposed fill areas shall be clearly flagged and staked by the agent and/or contractor. All construction personnel shall be shown the location(s) of all wetland areas outside of the construction area to prevent encroachment from heavy equipment into those areas. In addition, all filled areas shall be completely contained through installation of toed-in silt fencing and staked hay bales and maintained until work has been completed.

c. All persons/contractors involved in this permitted activity shall be provided copies of the permit in its entirety. A copy shall remain on site at all times during construction.

d. Fill material used with this project shall be limited to suitable, clean fill material, which excludes material such as trash, debris, car bodies, asphalt, construction materials, concrete block

with exposed reinforcement bars, and any soils contaminated with any toxic substance in toxic amounts (see Section 307 of the Clean Water Act).

e. All slopes shall be stabilized with sod, degradable mats and/or seed and mulch. Erosion controls in the form of toed-in silt fencing and staked hay bales will be installed and maintained until the vegetative cover is established.

f. The permittee shall notify the U.S. Army Corps of Engineers, upon commencement and completion of work authorized by this RGP. Such notification must be provided within 5 days of initiation and completion of the authorized work. The notification shall be submitted to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001.

g. Within 60 days of completion of the authorized work, the RGPs Self-Certification Statement of Compliance must be completed and submitted to the U.S. Army Corps of Engineers. Mail the completed form to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001.

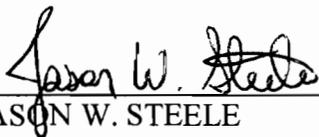
h. If you sell the property associated with this RGP, you must complete and submit the Department of the Army Permit Transfer Request. Mail the completed form to the U.S. Army Corps of Engineers, Mobile District, Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001.

i. Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this Regional General Permit. The District Engineer reserves the right to require that any request for authorization under this Regional General Permit be evaluated as a standard permit. In addition, this RGP does not obviate the need for the permittee to obtain other Federal, state, or local authorizations required by law, nor does it grant any property rights or exclusive privileges.

j. RGP SAM-20 shall be valid until **May 23, 2009**, unless suspended or revoked by issuance of a public notice by the District Engineer. If RGP SAM-20 expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on RGP SAM-20 will remain in effect provided the activity is completed within 12 months of the date RGP SAM-20 expired or was revoked.

18. CONCLUSION/FINDING OF NO SIGNIFICANT IMPACT (FONSI): Based on the above assessment, analysis and consideration of comments presented by other agencies and the public, and after weighing all factors involved in the proposal, I have concluded that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

PREPARED BY:



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Coastal Branch, Team Leader
Regulatory Division

REVIEWED BY:



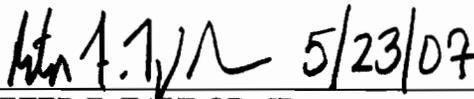
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Acting Chief
Regulatory Division

APPROVED BY:



PETER F. TAYLOR, JR.
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District Commander

APPENDIX A

Point by Point Analysis of Public Notice Comments:

a. **Federal Emergency Management Agency (FEMA)**: FEMA responded to the first public notice, by e-mail dated December 8, 2006, that they were neither for nor against the proposal. FEMA requested we add a Special Condition to the proposed RGP to address “conformance with NFIP local requirements and flood risk maps.” FEMA did not comment on the second public notice.

USACE Response: This RGP would not allow developments within the FEMA designated 100-year floodplains. A special condition was added to exclude the RGP from within 100-year floodplains, as documented by Federal Emergency Management Administration’s (FEMA) Flood Insurance Rate Maps, FEMA-approved local floodplain maps and flood risk maps.

b. **U.S. Fish and Wildlife Service (FWS)**: The FWS responded to the first public notice, by letter dated November 16, 2006. The FWS concerns included: 1) the FWS disagrees with the USACE finding of “No Effect” for the RGP; 2) concerned with the types of developments allowed (open-ended); 3) the 5-acre limit of fill is excessive; 4) there is no definition of non-tidal wetlands adjacent to tidal waters; 5) the RGP does not require in-kind mitigation; 6) there is great potential for the occurrence of federally listed species in the Mississippi Gulf Coastal Plain. The FWS believes that direct and indirect impacts often occur adjacent to the proposed project site through fragmentation of habitat such as alteration or culverting of streams, and adverse effects may not be obviously discernible. It is vital that the FWS performs a review of all projects seeking authorization for impacts; 7) there are insufficient safeguards in place, i.e. flagging, silt fencing, to avoid impacts to adjacent wetlands. In the November 16, 2006 letter, the FWS advises that the proposed work may result in substantial and unacceptable impacts to aquatic resources of national importance (ARNI); in accordance with the procedural requirements of the 1992 404(q) Memorandum of Agreement (MOA), Part IV 3(a). The FWS letter concludes with the recommendation of denial due to potential direct, indirect, and cumulative impacts to federally listed species and wetlands.

The FWS did not comment on the second proposal/public notice. They did however commend the USACE for its revisions to the RGP, during a February 1, 2007 teleconference between the USACE and the other State and Federal Agencies.

USACE Response: Under the 1992 404(q) MOA, the FWS has until the 25th day after the end of the public notice comment period to send a paragraph 3.b. letter. The 3.b. letter would state that the project "will" impact an ARNI. At this point, additional coordination may be required to resolve the concerns. Even though the FWS did not send a 3.b. letter, USACE continued coordination efforts to address their concerns and modified the proposed RGP. The following is an item by item response to their concerns: 1) & 6), the USACE would coordinate every application, requesting authorization under this RGP, with the FWS for threatened and/or endangered species; 2) the

type of developments have been restricted to residential developments and has excluded commercial and institutional developments from the proposal; 3) the USACE has revised the proposal to reduce the allowable impacts to 3-acres or less of low-quality wetlands; 4) the USACE has defined non-tidal wetlands adjacent to tidal waters in this revised proposal by using the national USACE definition; 5) the omission of in-kind mitigation was an oversight on the initial proposal and is now a requirement of the revised/current proposal. Mitigation requirements will be consistent with national mitigation guidance and RGL 02-02; 7) the USACE has added special conditions to ensure impacts to adjacent wetlands are minimized or avoided.

In addition, the RGP states, “No authorization shall be granted for any project that may affect any threatened or endangered species and/or their critical habitats. Permit submittal must include a Federally-listed threatened and endangered animal and plant species survey. If Federally-listed animal and/or plant species are found on the site, no activities will be authorized until the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service have completed consultation on the project. No activity shall be authorized which: 1) may affect: any other Federally-listed threatened or endangered species; or 2) may destroy or adversely modify: designated critical habitat for any Federally-listed threatened or endangered species.” Also, a special condition of the RGP requires the applicant provide, “A Federally-listed threatened and endangered animal and plant species survey.”

c. **Environmental Protection Agency (EPA)**: The EPA responded to the first public notice, by letters dated December 11, 2006 and January 4, 2007. The December 11, 2006 letter was a 3(a) letter, pursuant to the 1992 404(q) MOA elevation procedures. The EPA also sent a follow up letter on January 4, 2007 outlining their concerns. This letter did not reference Part IV 3.b of the MOA. The EPA was concerned that: 1) this RGP may not adequately protect resources necessary for a vibrant and resilient coastal MS; 2) the RGP may result in unacceptable adverse effects to ARNI; 3) the RGP may result in significant individual and cumulative adverse impacts to the aquatic environment; 4) the RGP does not comply with the 404 b(1) Guidelines; 5) the EPA believes that this RGP is not approvable at this time.

The EPA recommended: a) that all sewage will be treated in publicly owned treatment works, b) stormwater management facilities located in waters of the US will need to demonstrate avoidance, minimization and mitigation, c) the cumulative total of impacts associated with a single and complete project should not exceed the threshold limit of impacts authorized under a single permit, d) the threshold for the RGP be similar in scope to the NWP. i.e. one to 0.5 acres of impact, e) establish an annual cap to losses of waters of the U.S., f) discuss how temporal losses should be assessed and mitigated, g) define “non-tidal wetlands adjacent to tidal waters”, h) that the RGP only authorizes permanent impacts to wetlands that are primarily established and maintained by hydrology from groundwater or wetlands that are forested hydric pine-flatwoods, i) change “any affected stream” to “any affected waters of the U.S.”, j) add floodplain condition, k) add “work must not impede or increase natural drainage on adjoining properties”, l) add monitoring and tracking requirements for this RGP, m) add appropriate conditions as required under the Coastal Zone Act Reauthorization Amendments (CZARA), n)

provide a map showing existing approved mitigation banks, o) mitigation should be completed prior to starting work, p) the RGP should only apply to projects that have no above grade fills within the floodplain and should apply only to projects that are located outside the 100-year floodplain, q) have proposed fill areas and wetland areas flagged and staked in a manner that clearly differentiates between the fill areas and the wetland areas.

The EPA did not comment on the second proposal/public notice. They did however commend the USACE for its revisions to the RGP, during a February 1, 2007 teleconference between the USACE and the other State and Federal Agencies.

USACE Response: Under the 1992 404(q) MOA, the EPA has until the 25th day after the end of the public notice comment period to send a paragraph 3.b. letter. The 3.b. letter would state that the project "will" impact an ARNI. At this point, additional coordination may be required to resolve the concerns. Even though the EPA did not send a 3.b. letter, USACE continued coordination efforts to address their concerns and modified the proposed RGP. The following is an item by item response to their concerns: a) a condition that sewage be treated in publicly owned treatment works has been added to the current proposal; b) all projects are required to avoid, minimize, and mitigate for all wetland impacts. The USACE will review the proposal and ensure this provision is met before authorization is issued under the RGP; c) a condition that the cumulative total of impacts associated with a single and complete project should not exceed the threshold limit of impacts authorized under a single permit was added to the current proposal; d) the RGP would be less effective if allowable impacts were decreased any more than the proposed 3-acre limit. They would essentially be NWP's; e) the USACE does not believe that a cap is warranted and a time limit is more efficient in this case (2-years initially, 5-years maximum); f) there should be no temporal wetland loss, since the applicant is required to mitigate through a bank, where the functional gain is done in advance of the credits being released; g) "non-tidal wetlands adjacent to tidal waters" has been defined; h) the USACE has determined that permanent impacts to low-quality wetlands is a more understandable term; i-m) EPA's recommendation to change "any affected stream" to "any affected waters of the US", add floodplain condition, add "work must not impede or increase natural drainage on adjoining properties", add monitoring and tracking requirements for this RGP, and add appropriate conditions as required under CZARA were added to the current proposal. The tracking would be an internal USACE system that does not require adding to the revised proposal; n) a map showing existing approved mitigation banks is currently on the Mobile District's website; o) a condition that mitigation should be completed prior to starting work was already a condition of the first proposal; p) the revised proposal does not authorize impacts to 100-year floodplains; q) a condition that proposed fill areas and wetland areas be flagged and staked in a manner that clearly differentiates between the fill areas and the wetland areas was already a condition of the first proposal. In addition, the USACE would coordinate every application, requesting a permit under this RGP, with the EPA.

d. Mississippi Department of Archives and History (MDAH): The MDAH responded to the first public notice, by letter dated December 28, 2006, that recommended the USACE take into account the possibility of unknown cultural resources in all projects, in addition to listed

and/or eligible resources (para.10), pursuant to Section 106 of the National Historic Preservation Act and 36 CFR Part 800.

The MDAH did not comment on the second proposal/public notice.

USACE Response: The USACE will coordinate with the SHPO on every application requesting authorization under this RGP. In addition, a special condition of the RGP reads, "Should artifacts or archaeological features be encountered during project activities, work shall cease and the Mississippi State Historic Preservation Officer and the U.S. Army Corps of Engineers, Mobile District, Regulatory Division shall be consulted immediately. Permit submittal must include either a Phase I survey or a letter from the State Historic Preservation Officer (SHPO), for Mississippi, confirming that no impacts to known cultural/historical resources will occur on the project site." The USACE 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." If the Phase I survey indicates that no cultural/historical resources are present, then the USACE will make a no effects determination and state this in the coordination with SHPO. If SHPO disagrees with the determination, then the project will be either elevated to an IP or the project will be held in abeyance until SHPO has issued final clearance for the project to be issued.

e. **Mississippi Department of Marine Resources (DMR):** DMR responded to the first public notice, by letter dated December 8, 2006 saying, that they support the proposal, but made a few suggestions. The DMR asked that lands adjacent to Coastal Preserves be excluded from the RGP, they requested a 7-day Public Notice that the RGP should only be used for residential and institutional developments, and the applicant should provide evidence showing their project would not increase flooding to adjacent lands.

The DMR did not respond to the second public notice. They did however issue Coastal Zone Management authorization, by letter dated March 14, 2007.

USACE Response: All of these suggestions were taken into account on the proposal and the RGP was revised to reflect the recommended changes. In addition, the USACE would coordinate with DMR on every application requesting authorization under this RGP.

f. **Mississippi Department of Environmental Quality (DEQ):** DEQ responded to the first public notice, by letter dated December 6, 2006, that: 1) the public notice was not a "Joint" PN; 2) how would attendant features be defined?; 3) requested clarification on the definition of tidal waters and non-tidal wetlands; 4) requested clarification on how previously permitted mitigation areas would apply to permit modifications that remove mitigation requirements from on-site wetland areas and proposed permit actions on the same previously approved mitigation areas; 5) the RGP should not authorize activities within stream channels that would result in the destruction of the natural stream characteristics that are vital to the protection of water quality; 6) concerned with impacts to perennial streams and believes these impacts are not minimal; 7) the applicant should be required to provide previous permits if any; 8) mitigation should be as

close to project site as possible and within the State; 9) the applicant should provide all necessary local approvals and show that the project would not increase flooding on adjacent lands; 10) only residential and institutional developments should be authorized by this RGP; 11) DEQ needs a 7-day PN comment period; 12) the RGP should address the issue of impacts to waters listed as 303 (d) impaired water bodies and should be coordinated with DEQ so they can make this determination; 13) the applicant should provide documentation that wastewater treatment has been provided; 14) the applicant should address temporary impacts; 15) applicant should be required to clearly state how their proposal relates to redevelopment due to Hurricane Katrina; 16) should include administrative tracking requirements to evaluate the extended need for such authorizations.

The DEQ did not respond to the second public notice. They did however issue water quality certification by letter dated March 28, 2007. In a conference call on February 1, 2007, the DEQ indicated that they were satisfied with the USACE change to the RGP and had no recommendations for improvement.

USACE Response: 1) the revised PN was a joint PN; 2) attendant features are somewhat defined, but the USACE did not want the RGP to be so limiting that it could not be used. Therefore, attendant features would be determined by the USACE on a case by case basis; 3) the definition of tidal waters and non-tidal wetlands have been clarified in the current proposal; 4) the USACE requires on every permit that has mitigation, that the mitigation area is placed in a conservation easement/restrictive covenant. A condition of this RGP is that the RGP is excluded in "Conservation Lands, Conservation Easements, Conservation Trusts, USACE required mitigation areas or parcels/tracts abutting these lands"; 5) the revised RGP requires methods of stream crossings that would guarantee stream impacts are kept to a minimum. This would include impacts that limit road crossings to no greater than 30-feet in width, using bottomless arch culverts, box-culverts, or other USACE approved methods. In addition, a 30-foot vegetated buffer is required between the development and streams; 6) the impacts to streams are limited to road crossings with methods that guarantee stream impacts are minimal; 7) a condition that requires the applicant to provide previous permits, if any, is not warranted, since the application asks this question and the USACE can do a search in our database for this information; 8) the mitigation is required at a USACE-approved mitigation bank. The applicant would go to the bank that services the impact area first and can go to another bank if the first bank is sold out of credits. Since, the requirement is "USACE-approved" there will be no problems with out-of-state banks being used; 9) the local approvals would be up to the applicant to obtain. A condition that requires the applicant demonstrate that their project will not impact adjacent properties was added to the revised RGP; 10) only residential developments are authorized by the current proposal; 11) a 7-day (working day) coordination period between the USACE and the State and Federal Agencies has been added to the current proposal; 12) the USACE would coordinate with DEQ on every application requesting authorization under this RGP so that they can make a determination on impacts to waters listed as 303 (d) impaired water bodies; 13) a condition that the applicant provide documentation that wastewater treatment has been provided has been added to the current proposal; 14) temporary impacts are addressed in

the current proposal; 15) a condition that the applicant clearly state how their proposal relates to the redevelopment due to Hurricane Katrina has been added to the current proposal; 16) the USACE would keep track of each RGP SAM-20 issued and place this information on our website monthly.

g. **Dauphin Island Sea Lab**: Dauphin Island Sea Lab responded to the first public notice, by letter dated October 27, 2006, that: 1) mitigation should be within the same watershed as the impacts; 2) the RGP will lead to accelerated loss of the most cost effective flood mitigating system there is; 3) the only difference between a project covered by an IP and the RGP is the public comment period being waived. This means the USACE will have to do all that it does for an IP, only faster; 4) the RGP will be self-reporting and self-regulating.

The Dauphin Island Sea Lab did not respond to the second public notice.

USACE Response: 1) the RGP has a condition that, "The applicant is required to purchase credits from mitigation banks whose service area includes the project area (i.e. same watershed as impacts). If a project does not fall within any mitigation bank's service area, the applicant shall then purchase in-kind mitigation bank credits from another USACE-approved mitigation bank". The mitigation banks currently have the capacity to service any and all projects associated with this RGP, 2) the RGP would not cause/allow any more impacts to wetlands than would be permitted under the IP process, 3) the public comment period is being waived, but applications would be coordinated with the State and Federal agencies. Also, the issued permits would be placed on the Mobile District's website for the public to view the issued permits. In addition, the USACE Mobile District only receives comments from the public on approximately 10% of its public notices, 4) the USACE would be verifying the accuracy of what the applicant submits and whether or not the wetlands are in fact low-quality.

h. **Public Employees for Environmental Responsibility (PEER)**: PEER responded to the first public notice, by letter dated December 8, 2006, that: 1) the RGP would result in more than minimal impacts to aquatic ecosystems; 2) the RGP fails to protect the region from flooding; 3) the RGP fails to require sufficient information from prospective permittees to allow the USACE to make an informed decision on the impacts associated with the proposed fill; 4) the RGP relies too heavily on potentially unqualified permittees to provide scientific information to the USACE, and; 5) the RGP is vague and unenforceable.

PEER responded to the second public notice, by letter dated March 9, 2007. The letter was written on behalf of the Gulf Restoration Network and Environmental Defense. PEER commented that: 1) the RGP would result in more than minimal impacts to the aquatic ecosystem, and fail to protect the region from flooding; 2) they do not like that "adjacent" is being defined as 200-feet from tidal waters. PEER believes this does not protect better than the current regulations/definitions; 3) Special Condition 6 (low-quality wetlands and assessing them using WRAP) relies on undefined terms and an inappropriate wetland assessment methodology, and therefore is vague and unenforceable (low-quality was not defined); 4) the special condition that prohibits work that may have secondary or cumulative effects to estuarine,

marine emergent, and/or submerged aquatic vegetation is vague and unenforceable; 5) ALL stream impacts, including road crossings should receive an Individual Permit; 6) “beef up” stream definition to say impacts to perennial, intermittent and ephemeral streams; 7) limit one stream crossing per project site; 8) the applicant should be required to submit pre-project hydraulic flows, water quality data, and flood data; 9) the proposed requirements for mitigation are inadequate to compensate for wetland losses; 10) reduce the fill limit to ½ acre or less.

USACE Response: In response to the first PN comments, 1) as referenced in the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document, the USACE has determined the impacts associated with this permit, if issued, would be minimal; 2) floodplain coordination would take place in accordance with FEMA requirements; 3) the USACE has determined that the information required to qualify for this RGP is more than sufficient for the USACE to make an informed decision; 4) the USACE would verify the accuracy of the information provided and quality of wetlands on every application; 5) the USACE has determined that the RGP was defined as clearly as possible and has been coordinated to ensure it is enforceable.

USACE Response: In response to the second PN comments, 1) as referenced in the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document, the USACE has determined the impacts associated with this permit would be minimal. Please see the flooding sections under the public interest section of this document; 2) the RGP was revised to remove the 200-foot rule for defining “adjacent” and go with the current national Regulatory Division definition; 3) the Mobile District has been using WRAP for approximately 4-years. This is an established methodology that the USACE staff and regulated community are familiar with. Therefore, the USACE has determined that WRAP is sufficient, accepted methodology to assess impacts and that this warrants its use. Low-quality wetlands have been defined in the revised version of the RGP; 4) this condition was deleted from the new version of the RGP. The condition was unnecessary, because the RGP does not allow impacts to tidal waters or wetlands adjacent to tidal waters; 5) the USACE has revised the RGP to limit types of stream impacts and methodologies used to cross streams and is more restrictive on stream impacts than the current NWP 14. Therefore, the USACE has determined stream impacts would be minimal in any RGP issued; 6) the USACE does not believe this is warranted, since there are only three types of streams (perennial, intermittent, and ephemeral) and the term streams automatically takes all three into account; 7) the RGP is limited by acreage and the USACE has determined this is one of the methods used to ensure minimal impacts (special conditions and mitigation are the others); 8) the USACE has determined that the required information is sufficient for the USACE to make a determination on the project and ensure minimal impacts would occur as a result of their project; 9) the mitigation requirement used for this RGP is the same, if not more restrictive, than our current IP requirements; 10) reducing the fill limit to 1/2 –acre or less would not meet the need for this type of project, and would essentially result in a NWP.

i. **Mississippi Wildlife Federation:** The Mississippi Wildlife Federation responded to the first public notice, by letter dated December 8, 2006, that: 1) the proposed RGP increases the risk of flooding and flood damage, ignoring the USACEs public interest review; 2) the USACE

may not justify its RGP as a means of managing its permit workload; 3) the RGP authorizes activities that are not similar in nature, in violation of 404 (e); 4) the RGP authorizes activities that are not minimal in impact, in violation of 404 (e); 5) NWP 39 is available for expedited review of residential, commercial, and institutional developments impacting non-tidal wetlands.

The Mississippi Wildlife Federation responded to the second public notice, by letter dated March 8, 2007, that: 1) the RGP results in more than minimal impacts to the aquatic ecosystem; 2) the RGP fails to protect the region from flooding; 3) the RGP fails to require sufficient information from prospective permittees to allow the USACE to make an informed decision on the impacts associated with the proposed fill; 4) the RGP relies too heavily on potentially unqualified permittees to provide scientific information to the USACE; is vague and unenforceable, and contrary to existing regulations; 5) the Mississippi Wildlife Federation would like to see on-site mitigation for all projects that result in any impacts to flood storage or water purification values.

USACE Response: In response to the first PN comments, 1) the USACE has addressed flooding and flood damage under the Public Interest review section of this document; 2) The primary purpose of this RGP is not to manage the USACE workload. The 33 CFR regulations have provisions for developing RGPs to allow for expediting the permitting procedures for projects of similar nature which only result in minimal impacts. The USACE is merely implementing this regulatory provision as a means to ease some of the regulatory burden which contributes to delays associated with the rebuilding of this storm-ravaged area.; 3) 33 CFR 323.2(h) provides that General Permit's (GP) can be issued for activities that are "substantially similar in nature" or upon finding that the issuance of the permit "would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State or local agency." The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 4) as referenced in the Alternatives Analysis, 404(b)(1) guidelines, and Public Interest sections of this document, the USACE has determined that there would only be minimal impacts associated with any RGP issued; 5) the NWP-39 covers fills up to one-half acre of wetlands, including high-quality wetland impacts. The Mobile District typically issues NWP-39s within 45 days of receipt of a complete application (well within the national average). IP's typically take 249 days (outside the national average). Therefore, to expedite the recovery of the Mississippi coastal area, an RGP that could be issued within 60 days is warranted.

USACE Response: In response to the second PN comments, 1) as referenced in the Alternatives Analysis, 404(b)(1) guidelines, and Public Interest sections of this document, the USACE has determined that there would only be minimal impacts associated with any RGP issued; 2) flooding is addressed under the public interest factors section of this document; 3) the USACE is requiring more information to be submitted with the application under this RGP than is required by regulation under the normal IP process; 4) the USACE would verify the submitted information for accuracy, conduct site visits on all applications, conduct compliance inspections of most of the permits, and adhere to all rules and regulations set forth under our current regulations; 5) the USACE believes that onsite mitigation would leave those wetlands

more susceptible to development pressures in the future and would fragment those wetlands. Requiring mitigation from mitigation banks is a better solution, because the banks are doing the mitigation work as per the USACE oversight and guidance and the banks are held to a higher standard than if the mitigation were completed by the applicant on the applicant's property that has development all around it.

j. & k. **National Wildlife Federation (NWF) and the Natural Resources Defense Council (NRDC)**: The NWF and NRDC responded to the first public notice, by letter dated December 8, 2006. They provided the same comments that the Mississippi Wildlife Federation provided. The National Wildlife Federation and Natural Resources Defense Council responded to the second public notice by letter dated March 9, 2007. They provided the same comments as the Sierra Club's second public notice comments (See p. below).

USACE Response: The USACE has addressed these concerns under the Mississippi Wildlife Federation and Sierra Club's responses.

1. **Ducks Unlimited**: Ducks Unlimited responded to the first public notice, by letter dated December 8, 2006, that: 1) the RGP goes beyond redevelopment and allows for new development, which is contrary to the stated purpose of the RGP; 2) the individual and cumulative impacts to wetlands is greater than stated and should be withdrawn based upon the lack of scientific assessment of cumulative impacts, i.e. "cause only minimal individual and cumulative impacts" as stated in RGP; 3) the RGP would remove these projects from the public notice process and scrutiny by the public or other agencies; 4) wetland quality using WRAP is subjective and even low-quality wetlands serve a vital role; 5) the RGP will increase flooding and flood risk to properties. The RGP is counterproductive and would be a safety issue if implemented; 6) "timely issuance of permits" should not be a consideration in issuing this RGP. The USACE has a regulatory obligation to protect wetlands.

Ducks Unlimited did not respond to the second public notice.

USACE Response: 1) the purpose of the RGP is to allow the people of coastal Mississippi to utilize a streamlined permit process. If a requirement of that is to develop elsewhere (outside of their destroyed area) the USACE has determined this is a legitimate reason to allow for new development; 2) cumulative and secondary impacts are addressed under the public interest section of this document (cumulative and secondary effects); 3) each application for this RGP would be coordinated with the State and Federal agencies. Each permit issued, for this RGP, would be posted on our District website for the public's viewing; 4) WRAP has been used within the Mobile District for approximately 4 years and is an accepted and peer-reviewed methodology among agencies and the regulated public. The Regulatory staff and regulated community are familiar with its use. Because of its familiarity within the area, its consistency and ranking amongst the staff and consultants is very consistent, making its subjectivity minimal. Low-quality wetlands do serve a role for things such as flood storage. Flooding has been addressed under the public interest factors in this document; 5) flooding, flood risk and safety are addressed under the public interest factors of this document; 6) "timely issuance of permits"

is a critical factor in the reasoning for this RGP. The people of coastal Mississippi need to be able to recover from Hurricane Katrina in a timely manner. The Federal Government's role is to assist in this recovery. This RGP is the USACE's way of accomplishing this role, while making fair and balanced permit decisions.

m. **Audubon Society:** The Audubon Society responded to the first public notice, by letter dated December 10, 2006, that: 1) the RGP should limit development to pre-Katrina developed areas; 2) the RGP should exclude areas within or adjacent to the Pascagoula River Wildlife Management Area in Jackson and George Counties; 3) the RGP goes against the MOU between the Audubon Society and the USACE; 4) the 5-acre limit should be revised to be more reasonable; 5) low-quality wetlands should be better defined and stream channelization would cause significant adverse impacts; 6) federally-listed species surveys should extend to adjacent properties; 7) fills within 100-year floodplains should not be authorized; 8) the RGP should include exclusion areas to Important Bird Areas (IBA).

The Audubon Society did not respond to the second public notice.

USACE Response: 1) the current proposal requires the applicant to provide a statement as to how their project relates to recovery from hurricane Katrina; 2) the proposal was revised to exclude areas within or adjacent to the Pascagoula River Wildlife Management Area; 3) some of the revisions to the RGP were based on input from the Audubon Society (IBAs and Pascagoula River Wildlife Management Area are now excluded areas) and the vast majority of the Audubon Society's recommendations were taken into account and the RGP revised accordingly; 4) the 5-acre limit has been revised to 3-acres which the USACE has determined is reasonable and minimal; 5) the new definition for low-quality wetlands is defined as scoring a 0.5 or less using WRAP. Stream impacts have been limited to road crossings using methodologies that reduce or eliminate stream impacts; 6) each application would be coordinated with the FWS. If the FWS believes that an endangered species survey is warranted, the applicant would be required to conduct such survey; 7) fills within 100-year floodplains have been excluded from the current proposal; 8) the RGP was revised to exclude areas within or abutting Important Bird Areas (IBA).

n. **Tulane University:** Tulane University responded to the first public notice, by letter dated December 10, 2006, that: 1) the USACE must conduct a Public Hearing prior to issuing a General Permit; 2) the USACE should afford the public the opportunity to review and comment on the USACE decision document prior to issuance of any RGP, so they can make comment on the necessity for an EIS; 3) the USACE should go out on another PN if any changes are made; 4) the RGP is contrary to the NWP program since NWPs have been determined to have minimal impacts; 5) activities, covered in the RGP, are not similar in nature, as required by the CWA; 6) the RGP allows activities that will have more than minimal individual and cumulative impacts; 7) most of the conditions are useless, since the USACE no longer inspects the projects prior to or after completion; 8) the 5-acre limit will result in major impacts and is arbitrary and capricious and its applicability is not defined; 9) prohibiting the work in tidal waters or non-tidal wetlands adjacent to tidal waters does not sufficiently minimize impacts; 10) the

restriction of development to only low-quality wetlands as determined by a WRAP will not ensure minimal impacts; 11) mitigation requirements do not suffice to render the impacts minimal; 12) fills within 100-year floodplains cannot minimize the impact of the RGP on flooding; 13) the USACE must evaluate cumulative impacts by looking at past, present, and reasonably foreseeable future actions; 14) Biloxi alone has recently experienced 1736% in commercial growth; 15) when conducting its cumulative impacts analysis, the USACE must consider the plan of the region to be a new Las Vegas; 16) the USACE should not attempt to make a minimal impact determination without fully assessing and considering the status of Mississippi wetlands; 17) NWP-26 was revoked for a reason and the USACE has evolved through the years by reducing the amount of impacts associated with NWPs to ½-acre and deemed this acreage minimal; 18) the USACE cannot ensure that dredged or fill material is not discharged in a manner that jeopardizes endangered or threatened species; 19) the USACE's analysis of environmental impacts under NEPA must result in a finding of significant impact and therefore an EIS must be done.

Tulane University responded to the second public notice, by letter dated March 12, 2007, that:

1) activities allowed under the RGP are not similar in nature as required by the Clean Water Act; 2) the RGP allows activities that will have more than minimal individual and cumulative impacts; 3) the lack of compliance monitoring personnel at the Mobile District renders many of RGP SAM-20's special conditions useless; 4) the proposed RGP SAM-20's special conditions do not ensure that its impacts are minimal; 5) the three-acre limit in special condition 2 will result in major impacts and is arbitrary and capricious; 6) special condition 4 prohibiting work under RGP SAM-20 in tidal waters or non-tidal waters within 200 feet of tidal waters does not sufficiently minimize the impacts; 7) the restriction of development to only "low quality wetlands, " as determined by a WRAP assessment, will not ensure minimal impacts; 8) RGP SAM-20 's mitigation requirements in special condition 14 do not suffice to render the impacts minimal; 9) the USACE must evaluate cumulative impacts by looking at past, present, and reasonably foreseeable future actions; 10) when conducting its cumulative impacts analysis, the USACE must consider the plan of the region to be a new Las Vegas; 11) the USACE should not attempt to make a minimal impact determination without fully assessing and considering the status of Mississippi wetlands; 12) the USACE cannot ensure that dredged or fill material is not discharged in a manner that jeopardizes endangered or threatened species; 13) the USACE's analysis of environmental impacts under NEPA must result in a finding of significant impact and, therefore, an EIS must be done.

USACE Response: In response to the first PN comments, 1) the USACE has made a determination that no new information would come from a public hearing and has acquired enough information through coordination efforts to make a decision without holding a public hearing. No request for a public hearing stated that they had additional information to provide that could not otherwise be obtained.; 2) review of the decision document is not normal procedure. The public is afforded the opportunity to make comment on the necessity for an EIS during the PN comment period. No evidence or rational justification was given to conduct an EIS. An EIS is required for Federal actions resulting in "significant" impacts to the human environment. Through this EA/SOF the USACE will evaluate the proposed RGP and determine

if significant impacts would occur through use of this RGP. If the Statement of Findings indicates the proposed RGP would have “significant” impacts an EIS would be conducted; 3) if any changes were made that increase the scope of the proposal, the USACE would have issued another PN. The RGP became more restrictive and the scope further decreased, since the second PN was issued; therefore a new PN is not warranted; 4) the regulations afford the right of each District to develop RGPs as they deem necessary. The Mobile District has deemed this RGP necessary in order for the six lower counties to recover from hurricane Katrina through timely permit reviews ; 5) 33 CFR 323.2(h) provides that General Permit’s (GP) can be issued for activities that are “substantially similar in nature” or upon finding that the issuance of the permit “would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State or local agency.” The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 6) the USACE has addressed minimal impacts under the Alternatives Analysis, 404(b)(1) guidelines, and public interest section of this document. The USACE has addressed cumulative impacts under the public interest section of this document; 7) the project sites would be inspected prior to development for all applications for the RGP; 8) the 5-acre limit has been decreased to 3-acres and the rationale for 3-acres has been addressed within this document; 9) the applicant is required to avoid, minimize, mitigate, provide an alternatives analysis and meet every condition outlined in the RGP to be considered minimal impacts; 10) see 9 above; 11) see 9 above; 12) see public interest factors section of this document regarding floodplains and flood hazards; 13) see cumulative impacts section of this document; 14) commercial developments are not authorized under this RGP; 15) see cumulative impacts section of this document; 16) the status of Mississippi wetlands are outlined under Environmental Setting and public interest sections of this document; 17) this RGP is needed at this time. The RGP would be used for a short period of time and can be revoked at any time, for any reason the USACE deems warranted. Minimal impacts have been addressed throughout this document; 18) the USACE would coordinate every application with the FWS; 19) this document will examine the need for an EIS and determine if one is required.

USACE Response: In response to the second PN comments from Tulane University: 1) 33 CFR 323.2(h) provides that General Permit’s (GP) can be issued for activities that are “substantially similar in nature” or upon finding that the issuance of the permit “would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State or local agency.” The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 2) the USACE has addressed minimal impacts under the Alternatives Analysis, 404(b)(1) guidelines, and public interest section of this document. The USACE has addressed cumulative impacts under the public interest section of this document; 3) the project sites would be inspected prior to development for all applications of this permit; 4) minimal impacts are addressed under the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 5) please see the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 6) please see the Alternatives Analysis, 404(b)(1)

guidelines, and public interest sections of this document; 7) please see the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 8) please see the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 9) please see the cumulative impacts section of this document; 10) the RGP does not authorize commercial developments. In addition, the USACE does not involve itself in local zoning issues or property development trends that local governments decide.; 11) this is outlined under the cumulative impacts section of this document; 12) the USACE would coordinate every application for this RGP with the FWS; 13) the USACE will conduct a thorough analysis and determine if the need exists to conduct an EIS in this document.

o. **Stanford Legal Clinic:** Stanford Legal Clinic responded to the first public notice, by letter dated December 8, 2006, that: 1) the RGP allows for new development and is not restricted to redevelopment as proposed; 2) the RGP increases the risk of flooding and the risk of future hurricane damage; 3) the RGP provides insufficient procedure for identifying low quality wetlands; 4) the RGP sets ineffective "original fill" standards; 5) the RGP violates the CWA GP requirements; 6) the RGP permits activities that are not similar in nature; 7) the RGP permits projects that will have more than minimal impacts; 8) the RGP fails to account for environmental impacts, again failing the minimal impacts standard; 9) the RGP runs contrary to NEPA; 10) the RGP fails to meet the EA requirements for GP's; 11) no EA was issued for the RGP, nor does the proposed RGP even refer to an existing EIS; 12) the RGP is contrary to the pre-Katrina EIS; 13) the RGP inappropriately encourages piece-mealing.

Stanford Legal Clinic responded to the second PN, by letter dated March 9, 2007, that: 1) the proposed RGP provides a flawed procedure for identifying "low quality" wetlands; 2) the proposed RGP sets ineffective "original fill" standards; 3) the proposed RGP gives the false impression that inspections will occur to enforce permit conditions; 4) the proposed RGP contains unacceptably ambiguous provisions for renewal; 5) the proposed RGP provides a vague, unenforceable, and improper definition of tidal adjacency; 6) the proposed RGP is inconsistent with the purposes of the CWA; 7) the proposed RGP violates the CWA general permit requirements; 8) the proposed RGP permits activities that are not similar in nature; 9) the proposed RGP permits projects that will have more than minimal impact; 10) the proposed RGP fails to account for environmental impacts, again failing the minimal impacts standard; 11) the proposed RGP fails to meet the EA requirements for general permits; 12) no EA was issued for the initial or revised RGPs, nor has either version even referred to an existing EIS; 13) the proposed RGP remains contrary to the pre-Katrina EIS; 14) the proposed RGP inappropriately encourages piece-mealing.

USACE Response: In response to the first PN comments, 1) the current proposal requires the applicant provide a statement as to how their project relates to recovery from hurricane Katrina. The USACE does not want to be so restrictive that this RGP requires that applicants rebuild in areas destroyed from the hurricane, thus, putting them in harm's way once again; 2) please see the flood and flooding section under the public interest factors; 3) low-quality wetlands have now been defined; 4) the RGP reads, "For expansion of residential developments, the originally filled areas and proposed fill areas, combined, shall not exceed three acres." The term "original

fill” areas are areas that previously impacted wetlands. This has been better defined in the current version of the RGP; 5) the USACE believes that it has followed proper procedures for the development of an RGP, through guidelines set forth in our regulations; 6) 33 CFR 323.2(h) provides that General Permit’s (GP) can be issued for activities that are “substantially similar in nature” or upon finding that the issuance of the permit “would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State or local agency.” The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 7) minimal impacts are addressed under the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 8) minimal impacts are addressed under the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 9) this document explores whether if the RGP is issued, it would not be contrary to the public interest; 10) the USACE believes that it has followed proper procedures for the development of an RGP, through guidelines set forth in our regulations; 11) the USACE is not required to provide copies of its EA to the public prior to issuance of a permit. The public can review these documents once a USACE decision has been made; 12) the USACE review of the coastal EIS does not indicate that this RGP is contrary to the EIS. In addition, as noted from the comment, it was a “pre-Katrina” EIS and the area has dramatically changed since the EIS was prepared due to the hurricane; 13) a statement has been added to the RGP that addresses piece-mealing.

USACE Response: In response to the second PN comments, 1) low-quality wetlands are defined as 0.5 or less, using WRAP; 2) the RGP reads, “For expansion of residential developments, the originally filled areas and proposed fill areas, combined, shall not exceed three acres.” The term “original fill” areas are areas that previously impacted wetlands. This has been better defined in the current version of the RGP; 3) inspections would be performed on all applications that qualify for this RGP, prior to permit issuance; 4) after the initial 2-year period, the USACE would evaluate the impacts that have occurred during that timeframe and consult with the State and Federal agencies. Depending on the comments, the RGP may not be renewed. If the State of Mississippi indicates that the RGP is still needed, then the RGP may be renewed; 5) the term adjacent to tidal waters has been redefined in the new proposal to reflect the national definition; 6) the Alternatives Analysis, 404(b)(1) guidelines, and public interest section of this document makes a determination that the RGP is consistent with the CWA; 7) the impacts that would be associated with this RGP would be minimal and meet all requirements of developing an RGP; 8) 33 CFR 323.2(h) provides that General Permit’s (GP) can be issued for activities that are “substantially similar in nature” or upon finding that the issuance of the permit “would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State or local agency.” The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 9) minimal impacts are addressed under the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 10) minimal impacts are addressed under the Alternatives Analysis, 404(b)(1) guidelines, and public interest

sections of this document; 11) the USACE believes that it has followed proper procedures for the development of an RGP, through guidelines set forth in our regulations; 12) the USACE is not required to provide copies of its EA to the public prior to issuance of a permit. The public can review these documents once a USACE decision has been made; 13) the USACE review of the coastal EIS does not indicate that this RGP is contrary to the EIS. In addition, as noted from the comment, it was a “pre-Katrina” EIS and the area has dramatically changed since the EIS was prepared due to the hurricane; 14) a statement has been added to the RGP that addresses piece-mealing.

p. **Sierra Club:** The Sierra Club responded to the first public notice, by letter dated December 8, 2006. They provided the same comments that the Mississippi Wildlife Federation made. The Sierra Club responded to the second public notice, by letter dated March 9, 2007, that: 1) the proposed RGP authorizes activities that are dissimilar; 2) the proposed RGP authorizes activities that have greater than minimal impacts; 3) the mitigation provisions of the RGP are unreasonable.

USACE Response: 1) 33 CFR 323.2(h) provides that General Permit’s (GP) can be issued for activities that are “substantially similar in nature” or upon finding that the issuance of the permit “would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State or local agency.” The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 2) minimal impacts are addressed under the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 3) the USACE has determined that if the applicant provides mitigation, as outlined in the RGP, that the project would adequately offset the functions and values that would be lost due to the wetland impacts that would occur.

q. **Sierra Club (Mississippi Chapter):** The Sierra Club, Mississippi Chapter, responded to the first public notice, by letter dated October 18, 2006, that: 1) the USACE has not adequately considered alternatives, which include building on uplands and previous building sites; 2) this RGP would cause major cumulative adverse impacts.

The Sierra Club (MS Chapter) did not respond to the second public notice.

USACE Response: 1) refer to the “Alternatives Analysis” section of this document; 2) refer to the “cumulative” impacts section of this document.

r. **Wise Use Movement:** Wise Use Movement responded to the first public notice, by letter dated October 20, 2006, that: 1) the RGP should not allow development in floodplains; 2) there is no evidence that all six counties require relief for redevelopment; 3) this RGP will lead to more wetland loss; 4) the RGP does not comply with the Clean Water Act; 5) the RGP does not comply with the 404(b)(1) Guidelines; 6) the RGP does not comply with 40 CFR 230.10(a)(3) concerning “water dependency”; 7) the RGP does not allow for public

participation/comments on each application; 8) the USACE has no Congressional authority to issue a RGP for a geographic area smaller than a state; 9) residential, commercial, and institutional developments are not similar in nature; 10) an EIS should be prepared.

Wise Use Movement responded to the second public notice, by letter dated March 11, 2007, that: 1) the proposed RGP fails to comply with the Clean Water Act because it fails to restore and maintain the chemical, physical and biological integrity of our nation's wetlands; 2) the RGP would contribute to a significant adverse impact to the environment; 3) the RGP would help destroy the biological integrity of southern Mississippi wetlands by allowing filling for non-water dependent uses in five acre chunks; 4) the RGP is contrary to the Federal Clean Water Act because it does not restore or maintain our nation's wetlands; 5) the proposed RGP relies on wetland mitigation banks for mitigation of non-water dependent wetland filling. This continues an illegal wetland mitigation banking program which fails to incorporate public participation in the administration and enforcement of such wetland mitigation banks and, therefore, will contribute to a significant adverse impact to the environment; 6) the proposed RGP fails to comply with the 404(b)(1) guidelines by allowing applicants to use illegal wetland mitigation banks to avoid the practicable alternatives test. This will contribute to a significant adverse impact to the environment. 40 CFR 230.6(d) of the 404(b)(1) guidelines which exempt general permits from alternatives analysis at the time when activities are conducted under a general permit is itself contrary to the Clean Water Act. The RGP is contrary to 33 CFR 320.4 because the RGP is specifically designed to allow wetland filling without an alternatives analysis; 7) the proposed RGP fails to comply with 40 CFR 230.10(a)(3) by continuing to allow the USACE to issue general permits for activities which are not "water dependent."; 8) the RGP is contrary to the Federal Clean Water Act because the USACE has no Congressional authority to issue a RGP for a geographic area smaller than a state; 9) the RGP is contrary to the Federal Clean Water Act because it does not cover a category of activities similar in nature; 10) Wise Use Movement requests that an Environmental Impact Statement (EIS) be prepared.

USACE Response: In response to the first PN comments, 1) please see the flooding and floodplain section of this document, under public interest factors; 2) the USACE has been informed by the State of Mississippi that in fact all six counties require regulatory relief; 3) this RGP will not lead to a loss of wetland functions because of the required compensatory mitigation. This is further explained in the Alternatives Analysis, 404(b)(1) guidelines, and public interest sections of this document; 4) this is addressed under the 404(b)(1) guidelines section of this document; 5) this is addressed under the 404(b)(1) guidelines section of this document; 6) see Alternatives Analysis section of this document; 7) each application, for use by this RGP, will be coordinated with the applicable State and Federal agencies. To inform the public, the USACE will post each issued permit (SAM-20) on the Mobile District, Regulatory Division website once per month; 8) the USACE is not required to obtain Congressional authority to develop an RGP for a District. In fact, the Regulations encourage their use, where appropriate. In this situation (Hurricane Katrina), the USACE believes it is an appropriate time to develop an RGP; 9) 33 CFR 323.2(h) provides that General Permit's (GP) can be issued for activities that are "substantially similar in nature" or upon finding that the issuance of the permit "would result in avoiding unnecessary duplication of regulatory control exercised by another

Federal, State or local agency.” The USACE had concerns about whether the activities (residential and institutional developments) were similar enough in nature. This was also an issue raised by a number of commenters. Because of these concerns the USACE elected to limit the RGP to residential development only; 10) this document will evaluate the need for an EIS.

USACE Response: In response to the second PN comments, these issues are addressed in the Alternatives Analysis section, 404(b)(1) guidelines section, public interest section of this document and first USACE response to their comments above.

s. **Cynthia Henderson:** Cynthia Henderson responded to the first public notice, by letter date stamped November 13, 2006, that: 1) WRAP is subjective and the USACE should use other methodologies such as HGM; 2) mitigation areas, restrictive covenants, or easements, should be in GIS format and available to the public.

Cynthia Henderson did not respond to the second public notice.

USACE Response: 1) WRAP has been used by the Mobile District Regulatory Division for approximately 4 years and is an accepted and peer-reviewed methodology. The Regulatory staff and regulated community are familiar with how to use the assessment and therefore believes it is the best option for assessing impacts at this time; 2) the USACE requires these documents be recorded by the applicant with the Counties in which they occur. The public has access to County deeds and documents.

t. **Public:** We received approximately 3,500 comments from the public on the first public notice (approximately 3,000 against and 500 in favor of the proposed RGP). We received approximately 450 comments from the public on the second public notice. All 450 comments objected to the issuance. The second round of comments can be summarized by the following comments, since they primarily were form letters: 1) the proposed RGP increases the risk of flooding and flood damage; 2) the USACE may not justify its RGP as a means of managing its permit workload. The District attempts to justify the RGP as necessary to "reduce the burden of the regulatory program on the public and ensure timely issuance of permits." However, speedy approval of wetlands destruction activities is not a valid objective under the Clean Water Act. The USACE has the burden to prove that such an RGP is necessary and in the public interest; 3) limiting the RGP to "low value" wetlands does not ensure that only minimal impact activities are authorized. Clean Water Act § 404(e) limits all general permits to categories of activities that will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect. The Mobile District' scaled back RGP would still authorize 6 times the ½ acre wetland fill limit that the USACE allows for similar activities under nationwide permits; 4) the proposed RGP will prevent full consideration of less damaging alternatives. All efforts to avoid unnecessary destruction of Mississippi's coastal wetlands should be pursued. Although the RGP application would contain a statement regarding avoidance and minimization, full and serious consideration of alternative, less damaging locations and designs for projects can only be expected to occur through the standard, individual permitting process. In addition, many wetlands that provide important flood storage, water

quality, wildlife habitat, and other functions and values will likely be identified as "low value" and will be filled under the District's proposal, whereas these wetlands could be ideal candidates for restoration, to improve environmental conditions; 5) complete reliance on mitigation banks to provide compensatory mitigation is unacceptable. The USACE continues to propose to rely exclusively on mitigation banks to provide compensation for wetlands impacts, and for some stream impacts, with no consideration that project-specific mitigation may be preferable to ensure, or approximate, replacement of wetland functions; 6) while the revised proposal is an improvement over the last, it fails to protect coastal communities from flooding and needs to be withdrawn; 7) the individual and cumulative environmental impacts from this proposal would be significant. Because of its vulnerability to flooding, the entire Mississippi coast deserves strong wetland protection, not rules that remove the ability of the public to review permits. There has been no demonstration that the proposed regional general permit is either necessary or in the public interest; 8) I would also like to request that the Army Corps of Engineers hold a public hearing on this proposal so that citizens can present testimony on the value of Mississippi's coastal wetlands and specific examples of ways that local residents will be impacted by this proposal.

USACE Response: These issues are addressed in the Alternatives Analysis section, 404(b)(1) guidelines section, public interest section of this document, through the other USACE responses, and through the public hearing determination section.

APPENDIX B

USACE Regional General Permit SAM-20